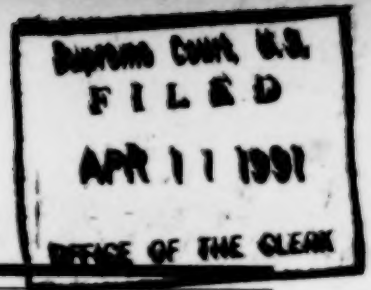


12
No. 90-681



IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

BARBARA HAFFER,

Petitioner

v.

JAMES C. MELO, JR. AND CARL GURLEY, ET AL.,

Respondents

On Writ of Certiorari to the United States Court
of Appeals for the Third Circuit

JOINT APPENDIX

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Petition for Certiorari filed October 26, 1990
Certiorari granted February 25, 1991

253942

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April 21, 1989	Complaint, filed
May 2, 1989	Summons and affidavit returned by William Goldstein, Esq. re: served defts on 4/27/89 by cert. mail, filed
May 19, 1989	Amended Complaint, filed
June 15, 1989	Barbara Hafer's Answer and Counterclaim, filed
July 14, 1989	Order that Defts Motion for Summary Judgment will be filed by 8/9/89, Joint Discovery Schedule Deferred, filed 7/14/89 entered
July 18, 1989	Order that this action is consolidated with 89-4033, 89-4034, 89-4035, 89-4036, 89-4037, 89-4038, 89-4133 for all pretrial purposes; and these cases are marked closed for statistical purposes and all papers shall be filed under 89-2935, filed, 17/18/89 entered
July 28, 1989	James J. West's Motion to Dismiss the Complaint or in the Alternative, for Summary Judgment, Brief, Cert. of Service, filed
July 28, 1989	Govt's Motion to Substitute in Place of James J. West on Counts Five and Six of the Amended Complaint and to Dismiss the Complaint, Brief, Cert. of Service, filed
August 9, 1989	Barbara Hafer's Motion to File a Consolidated Motion for Summary Judgment, Memo, Cert. of Service, filed
August 9, 1989	Barbara Hafer's Motion for Summary Judgment, Memo, Cert. of Service, filed

August 11, 1989 Order that Barbara Hafer's Motion to File a Consolidated Motion for Summary Judgment is Granted, filed 8/11/89 entered

August 18, 1989 Plaintiffs Answer to Motion of U.S. of America to Substitute in Place of James J. West on Counts V and VI of the Amended Complaint and to Dismiss the Complaint. Memo, Cert. of Service, filed

August 18, 1989 Plaintiffs Answer to Motion of Defendant James J. West to Dismiss the Complaint or, In the Alternative, for Summary Judgment, Memo., Declarations and Cert. of Service, filed

August 31, 1989 Plaintiffs Answer to Motion for Summary Judgments of Barbara Hafer, Memo, filed

September 28, 1989 Order the Defendants Motion for Summary Judgment is Granted, Actions 89-2935 and 89-2685 are Dismissed with Prejudice, filed Entered 9/28/89

September 28, 1989 Order that Gov'ts Motion to Substitute is Granted, and Counts V and VI of the Amended Complaint are Dismissed, filed - 9/28/89 - Entered

September 28, 1989 Order that James J. West's Motion for Summary Judgment is Moot, filed 9/28/89 Entered

October 18, 1989 Memorandum and order re: Motion for Summary Judgment, filed 10/28/89 Entered

October 25, 1989 Plaintiffs Notice of Appeal, filed 10/26/89 Entered.

**RELEVANT DOCKET ENTRIES IN CARL GURLEY,
ET AL. VS. BARBARA HAFER, U.S.D.C., E.D.PA.
C. A. NO. 89-2685**

April 13, 1989 Complaint, filed

June 15, 1989 Answer, filed

July 14, 1989 Order that Defts Motion for Summary Judgment Will Be Filed by 8/9/89, Joint Discovery Scheduled Deferred, filed 7/14/89 Entered

July 18 1989 Order that this Action and 89-3847 and 89-4950 are Consolidated for all Pretrial Purposes, Actions 89-3847 and 89-4950 are marked closed for statistical purposes, all papers shall be filed in 89-2685, filed 7/19/89 Entered

August 9, 1989 Barbara Hafer's Motion to File a Consolidated Motion for Summary Judgment, Memo, Cert. of Service, filed

August 9, 1989 Barbara Hafer's Motion for Summary Judgment, Memo, Cert. of Service, filed

August 11, 1989 Order that Barbara Hafer's Motion to File a Consolidated Motion for Summary Judgment is Granted, filed 9/11/89 Entered

August 31, 1989 Plaintiffs Answer to Motion for Summary Judgment of Barbara Hafer, Memo filed

September 28, 1989 Order that Defts Motion for Summary Judgment is Granted, Actions 89-2935 and 89-2685 are Dismissed with Prejudice, filed 9/28/89 Entered

October 18, 1989 Memorandum and Order re: Motion for Summary Judgment, filed 10/19/89 Entered

October 25, 1989 Plffs Notice of Appeal, filed 10/26/89 Entered

**RELEVANT DOCKET ENTRIES IN JAMES C. MELO, JR.,
ET AL. VS. BARBARA HAFER AND JAMES C. WEST,
U.S.C.A. 3d Cir., No. 89-1924**

December 19, 1989 Motion by aplee, Hafer for leave to file
suppl. apx w/aplee West, filed. (dr)

December 28, 1989 Order (Clerk) granting above motion,
Aplees are granted leave to file suppl apx
at time their briefs are due, filed. (dr)

December 19, 1989 Motion by aplee Hafer to consolidate
appeals, filed. (dr) (Cvs. 89-1924 & 89-
1925)

December 28, 1989 Order (Clerk) granting above motion,
Appeals are consolidated for briefing and
disposition, filed. (dr) (Cvs. 89-1924 &
89-1925)

January 30, 1990 Aplt's motion for leave to file a supple-
mental appendix, filed (baw) (cvs. 89-
1924/1925) **SENT TO MERITS PANEL**

February 1, 1990 Order (Clerk) referring aplt's motion for
leave to file a supplemental appendix to
the merits panel, filed (baw) (cvs.
89-1924/1925).
SENT TO MERITS PANEL (for info)

September 27, 1990 Motion of Aplee, Hafer, to Stay Man-
date, w/serv. fld. (bj) (cvs. (89-1924/25)

October 1, 1990 Aplt's Answer in Opposition to Motion
of Aplee, Hafer's Stay of Mandate,
w/serv., fld. (bj) (cvs. 89-1924/25)

October 3, 1990 Order (Sloviter, CJ) granting the above
motion, to & includ. Oct. 28, 1990, fld.
(bj) (cvs. 89-1924/25)

**RELEVANT DOCKET ENTRIES IN CARL GURLEY, ET
AL. VS. BARBARA HAFER, U.S.C.A. 3d Cir., No. 89-1925**

December 19, 1989 Motion by aplee Hafer to consolidate
appeals, filed. (dr) (Cvs. 89-1924 & 89-
1925)

December 28, 1989 Order (Clerk) granting above motion,
Appeals are consolidated for further
briefing & disposition, filed. (dr) (Cvs.
89-1924 & 89-1925)

January 30, 1990 Aplt's motion for leave to file a supple-
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w/serv., fld. (bj) (Cvs. 89-1924/25)

October 3, 1990 Order (Sloviter, CJ) granting the above
otion, to & includ. Oct. 28, 1990, fld. (bj)
(Cvs. 89-1924/25)

The following opinions, judgments and orders have been omitted in printing this joint appendix because they appear in the following pages of the appendix to the printed Petition for Certiorari:

Opinion and Judgment of the United States Court of Appeals for the Third Circuit, Entered August 21, 1990	A-1
Order of the United States Court of Appeals Denying Petition for Rehearing, entered September 21, 1990	A-32
Order of the United States District Court for the Eastern District of Pennsylvania, granting Motion for Summary Judgment, entered September 28, 1989	A-33
Memorandum Opinion of the United States District Court for the Eastern District of Pennsylvania, entered October 19, 1989	A-36

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES C. MELO, JR.	:	CIVIL ACTION
	:	
<i>Plaintiff,</i>	:	
vs.	:	
	:	
BARBARA HAFER	:	
and	:	
JAMES J. WEST, ESQUIRE	:	
<i>Defendants.</i>	:	NO. 89-2935

AMENDED COMPLAINT

The Parties

1. Plaintiff is an individual who resides at 1054 Neshaminy Valley Drive, Bensalem, PA 19020. Plaintiff resides within the Eastern District of Pennsylvania.

2. Defendant Barbara Hafer ("Ms. Hafer") is the current Auditor General of the Commonwealth of Pennsylvania and maintains a regular place of business in the Office of the Auditor General, Harrisburg, PA 17120. Plaintiff does not know Ms. Hafer's resident address. Ms. Hafer also maintains regular places of business for the Office of the Auditor General throughout Pennsylvania including the Eastern District of Pennsylvania.

3. Defendant James J. West, Esquire ("Mr. West") is the United States Attorney for the Middle District of Pennsylvania and maintains a regular place of business at the Federal Building, 228 Walnut Street, Harrisburg PA 17108. Plaintiff does not know Mr. West's resident address. The office of the United States Attorney maintains regular places of business in the Commonwealth of Pennsylvania including the Eastern District of Pennsylvania.

Jurisdiction and Venue

4. This is an action to redress the deprivation, under color of Pennsylvania Law, of rights and privileges secured to plaintiff by the Constitution of the United States together with pendant

State Court claims. Jurisdiction arises under 42 U.S.C. 1983, 1985 and 1988 and 28 U.S.C. 1343 and pendent jurisdiction.

5. Venue is proper in the Eastern District of Pennsylvania because plaintiff resides in the Eastern District of Pennsylvania and because Mr. West is an officer or employee of the United States who was acting under color of legal authority at all times relevant hereto. Venue is also proper because Ms. Hafer maintains a regular place of business in the Eastern District as does the Office of the United States Attorney.

Statement of Operative Facts

6. From 1977 through January, 1989, plaintiff was continuously employed by the Commonwealth of Pennsylvania in the Office of the Auditor General as a Field Auditor. During said period of time, plaintiff received promotions and his work was at least satisfactory.

7. The position plaintiff held with the Office of the Auditor General was not that of an advisor or a formulator of plans for the implementation of broad goals. Plaintiff did not serve in a policy-making or confidential position. Party affiliation was not a necessary or appropriate requirement for the effective performance of plaintiff's duties.

8. Plaintiff had no involvement in any job buying and/or job promotion scheme in the Auditor General's Office. Plaintiff did not provide money or anything of value to any person in connection with his employment, continued employment or the promotions he received during the course of his employment. Further, plaintiff has no knowledge that any third-person provided money or anything of value on plaintiff's behalf in connection with plaintiff's employment.

9. At some time prior to January 21, 1988, the date being unknown to plaintiff, John Kerr, a former employee of the Office of the Auditor General of Pennsylvania, and a convicted felon, stated that in 1978 he received a payment from a person other than plaintiff to influence a promotion for plaintiff. Mr. Kerr also identified approximately twenty (20) other employees of the

Office of the Auditor General of Pennsylvania on whose behalf payments were made to him to influence either employment or promotions.

10. On or about January 21, 1988, Mr. West provided to Donald Bailey ("Mr. Bailey"), the then Auditor General of Pennsylvania, in a "Personal and Confidential" communication, the list of said 21 employees. A copy of said communication is attached hereto and marked Exhibit "1". Mr. West stated in Exhibit "1":

"... We can express no opinion on whether these listed individuals knew of the purchase of their jobs other than the fact that our investigation affirmatively indicates that

did not know about her job purchase I would request that you keep these names strictly confidential, not use them for any type of media disclosures other than necessary to appropriate administrative proceedings, and make them available only to your most trusted employees on a need-to-know basis."

11. Mr. Bailey then conducted an investigation of the said 21 employees, including plaintiff. The conclusion of the investigation was that, with regard to plaintiff, there was no evidence that he committed wrongdoing or was aware of wrongdoing committed on his behalf. Attached hereto and marked Exhibit "2" is a copy of memo of October 17, 1988 from James L. McAneny, Chief Counsel for the Auditor General, to Mr. Bailey.

12. With specific reference to plaintiff, the investigation conducted by the Office of the Auditor General failed to disclose any corroboration of the statements made by Mr. Kerr.

13. In or about April 30, 1988, Ms. Hafer was nominated by the Republican Party of Pennsylvania to be the Republican candidate for the position of Auditor General of Pennsylvania, which position was up for election in November of 1988. At approximately the same time, Mr. Bailey was nominated by the Democratic Party of Pennsylvania to be the Democratic candidate for the position of Auditor General of Pennsylvania.

14. In 1988 and 1989, Mr. West has been a registered Republican.

15. In 1988 and 1989, plaintiff has been a registered Democrat.

16. The election campaign between Ms. Hafer and Mr. Bailey for the Office of Auditor General of Pennsylvania began approximately April 30, 1988 and continued until the November, 1988 election.

17. During said election campaign, Mr. West, under color of legal authority, provided Ms. Hafer with a copy of Exhibit "1" (wherein plaintiff's name appears on the list of twenty-one (21) employees) and advised Ms. Hafer that the persons whose names appeared on the list "bought their jobs."

18. In providing the aforesaid information to Ms. Hafer and in making the statement(s) to Ms. Hafer that the persons whose names appeared on the list "bought their jobs", Mr. West was motivated by a desire to assist the Republican candidate for Auditor General in the November, 1988 election and to create and/or foster a campaign issue that favored Ms. Hafer.

19. In the course of her campaign, Ms. Hafer stated on numerous occasions that she had received from Mr. West a list of employees of the Office of the Auditor General of Pennsylvania who had "bought their jobs" and Ms. Hafer further stated that, if elected, she would fire all of the employees whose names appeared on the list provided by Mr. West. The issue of "list of employees bought their jobs" was a major issue in the campaign.

20. When Mr. West provided Ms. Hafer with information about the list and advised Ms. Hafer that the persons on the list had "bought their jobs," he did so with a knowledge, understanding and expectation that he would be creating a campaign issue favorable to Ms. Hafer and that Ms. Hafer, if elected, would fire all of the people on the list.

21. Ms. Hafer won the November, 1988 election and was officially inaugurated on or about January 16, 1989.

22. On February 1, 1989, Ms. Hafer fired plaintiff. Ms. Hafer issued to plaintiff and made part of plaintiff's file a firing letter dated February 1, 1989, a copy of which is attached hereto and marked Exhibit "3."

23. The reason Ms. Hafer gave for firing plaintiff was that plaintiff's firing was "necessary based on information gathered by my office as well as through cooperation with other governmental agencies as a result of an investigation of your involvement in a job buying and/or a job promotion scheme in the Auditor General's Office."

24. Plaintiff avers, upon information and belief, that on or about February 1, 1989, Ms. Hafer also fired seventeen (17) other employees whose names appeared on the list and who were then employed at the Office of the Auditor General.

25. The only people Ms. Hafer fired on February 1, 1989 were persons whose names appeared on the list provided to Ms. Hafer by Mr. West. Ms. Hafer made public statements on February 1, 1989 that she was in fact firing eighteen (18) employees of the Office of the Auditor General of Pennsylvania who had paid "up to \$5,000 each for their jobs under a previous administration." Mr. West stated on February 1, 1989 that he appreciated Ms. Hafer's definitive action in firing the eighteen (18) employees. Attached hereto and marked Exhibit "4" is a copy of an article from the February 2, 1989 edition of the Patriot-Capital News which accurately sets forth the statements made by Ms. Hafer and Mr. West on February 1, 1989 concerning the firings.

26. Subsequent to her election, neither Ms. Hafer nor anyone on her behalf or at her direction conducted any examination or investigation with regard to plaintiff's alleged involvement in a "job buying and/or job promotion scheme" in the Auditor General's Office.

27. When Ms. Hafer fired plaintiff on February 1, 1989, she did not have in her possession any more information than was in the possession of the Auditor General's office on October 17, 1988, the date of Exhibit "2."

28. The firing of plaintiff by Ms. Hafer was the culmination of joint, concerted, and conspiratorial conduct between Ms. Hafer and Mr. West to create a campaign issue which would help Ms. Hafer win the election and was the fulfillment of a campaign promise made by Ms. Hafer which was an integral part of the campaign issue and the conspiracy created by Ms.

Hafer and Mr. West. Without Mr. West's participation, the issue would not have been created and plaintiff would not have been fired.

29. The personnel disciplinary powers of the department of the Auditor General are governed by the same due process standards that control decisions by any prosecutorial or civil authority.

30. Beginning in or about January, 1986, and continuing to the present, the department of the Auditor General has maintained in full force and effect a Policy and Procedure Manual. Copies of Sections 200 and 300 of said manual are attached hereto and marked Exhibits "4" and "5" respectively. Exhibits "4" and "5" apply to position actions and separations for employees of the Office of the Auditor General, including plaintiff, and specified the circumstances under which an employee may be disciplined, demoted, suspended or dismissed.

31. Ms. Hafer did not follow, comply or conform to the Policy and Procedural Manual with regard to firing plaintiff.

FIRST COUNT

Plaintiff's vs. Defendants for Deprivation of Civil Rights

32. Plaintiff re-alleges all preceding paragraphs.

33. Defendants, in connection with the firing of plaintiff on February 1, 1989, jointly and/or severally and under color of State law, subjected plaintiff and caused plaintiff to be subjected to a deprivation of the rights, privileges and immunities secured to him by the Constitution and laws of the United States.

34. In connection with firing plaintiff, Ms. Hafer did not follow, comply or conform to the Policy and Procedural Manual of the Office of Auditor General with regard to position actions and separations as well as disciplinary actions and dismissal. Plaintiff was fired without cause, without a hearing, without a reasonable pre-firing investigation and without procedural or substantive due process. Plaintiff was denied property and property rights without due process of law.

35. Plaintiff's firing was because of plaintiff's political affiliation and as a result of a purely political process. Defendants, jointly and/or severally, made plaintiff and his job a campaign

issue and, because the Republican candidate won the election, plaintiff was fired. Defendants have deprived plaintiff of his right of free speech and political association.

36. When Ms. Hafer fired plaintiff, Ms. Hafer made charges against him which could seriously damage his standing and his associations in his community and imposed upon plaintiff a stigma and disability that has and will foreclose plaintiff's freedom to take advantage of other employment opportunities. Defendants, during the election, and in connection with plaintiff's firing, have created and disseminated a false and defamatory impression about plaintiff. Defendants have deprived plaintiff of liberty without due process of law.

37. Ms. Hafer and Mr. West engaged in concerted and conspiratorial conduct in creating a campaign issue during the fall 1988 campaign for the Auditor General's Office wherein allegations were made by Ms. Hafer that Mr. West had provided her with a list of 21 employees who bought their jobs. In engaging in said conspiracy, Mr. West and Ms. Hafer were motivated, in whole or in part, to enable Ms. Hafer to win the election. All statements made by Ms. Hafer during the course of the campaign that persons on the list bought their jobs and all statements made by Ms. Hafer after her election in connection with the firing of said persons, including plaintiff, were made in the course of and in furtherance of the aforesaid conspiracy. The firing of plaintiff was in the course of, in furtherance of and was the culmination of the aforesaid conspiracy.

38. As a result of the deprivations of plaintiff's civil rights, as heretofore alleged, plaintiff suffered loss of employment, loss of income, loss of earning capacity, loss of earning potential, damage to his reputation, standing and associations in his community, disability with regard to future employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage. Because of emotional upset caused by his firing, plaintiff suffered an aggravation of pre-existing Crone's Disease which has caused him additional physical pain and suffering and has further caused him to incur medical expense all of which may continue into the indefinite future.

WHEREFORE, plaintiff claims compensatory damages in an amount of \$500,000.00.

SECOND COUNT

Plaintiff vs. Ms. Hafer and Mr. West for Conspiracy to Interfere with Civil Rights

39. Under the Penal Laws of the United States and the Commonwealth of Pennsylvania, plaintiff was not guilty of any crime in connection with his employment, continued employment or promotions with the Office of the Auditor General of Pennsylvania. Further, in accordance with the Policy Procedural Manual of the Office of the Auditor General of Pennsylvania, he was not properly the subject of discipline, demotion, suspension or dismissal. Further, by the fall of 1988, all applicable statutes of limitation had expired with regard to any allegation of an improper payment for promotion in 1978.

40. Ms. Hafer and Mr. West conspired and acted in concert to impede, hinder, obstruct and defeat the due course of justice in the Commonwealth of Pennsylvania with the intent to deny plaintiff as well as the other 20 employees on the list of employees transmitted by Mr. West to Mr. Bailey in Mr. West's letter of January 21, 1988, the equal protection of the laws. Defendants further conspired to deprive plaintiff and the class of persons which consists of the 21 employees named on the list in Exhibit "1" for purely political reasons, of equal protection under the laws. Ms. Hafer and Mr. West conspired to cause plaintiff and the other employees on the list to lose their jobs even though they had committed no criminal activity, the applicable statutes of limitations for criminal charges had expired as to some of them and even though their firings were in violation of the Policy and Procedure Manual of the Office of Auditor General of Pennsylvania with regard to discipline, demotion or suspension and dismissal and, as to some of them, their firings were also in violation of an applicable collective bargaining agreement.

41. As a result of said conspiracy, plaintiff suffered loss of employment, loss of income, loss of earning capacity, loss of

earning potential, damage to his reputation, standing and associations in his community, disability with regard to future employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage. Because of emotional upset caused by his firing, plaintiff suffered an aggravation of pre-existing Crone's Disease which has caused him additional physical pain and suffering and has further caused him to incur medical expense all of which may continue into the indefinite future.

WHEREFORE, plaintiff claims compensatory damages of defendants in the amount of \$500,000.00.

THIRD COUNT

Plaintiff vs. Defendants for Punitive Damages

42. Plaintiff re-alleges all preceding paragraphs.

43. The conduct of defendants, as heretofore alleged, was motivated by an evil motive and evil intent and acted with reckless and callous indifference to plaintiff's federally protected rights. Defendants acted in bad faith, without reasonable cause, and in wanton disregard for plaintiff's Constitutional rights. Defendant maliciously made charges stigmatizing plaintiff's reputation.

WHEREFORE, plaintiff claims punitive damages of defendants in the amount of \$500,000.00

FOURTH COUNT

Plaintiff vs. Defendants for Counsel Fees

44. Plaintiff re-alleges all preceding paragraphs.

45. Pursuant to 42 U.S.C. 1988, plaintiff requests that the Court award and direct defendants to pay plaintiff's reasonable attorney's fees.

WHEREFORE, plaintiff claims of defendants reasonable attorney fees in an amount not yet determined.

FIFTH COUNT

Plaintiff vs. Defendant West for Defamation (State Action)

46. Plaintiff re-alleges all preceding paragraphs.

47. During the course of the 1988 campaign for Pennsylvania Auditor General, which occurred from approximately April through November, 1988, Mr. West provided Ms. Hafer with a copy of Exhibit "1" and advised Ms. Hafer that the persons whose name appeared on the list in Exhibit "1," including plaintiff, "bought their jobs" with the Office of the Auditor General.

48. The statement made by Mr. West to Ms. Hafer that plaintiff "bought his job" was defamatory.

49. In the course of the campaign, Ms. Hafer made repeated statements that the persons whose names appeared on the list provided by Mr. West "bought their jobs" which statements constituted re-publications of Mr. West's original defamation.

50. On or about February 1, 1989, Ms. Hafer fired plaintiff in whole or in part because plaintiff's name was on the list and because Mr. West had told Ms. Hafer, during the fall, 1988 campaign, that all of the persons whose names appeared on the list had "bought their jobs".

51. On February 1, 1989, Ms. Hafer made public statements that the persons she was firing that day, including plaintiff, had paid up to \$5,000 each for their jobs. This statement constituted a re-publication of the original defamation made by Mr. West.

52. Plaintiff avers, on information and belief, that the defamatory statement made by Mr. West to Ms. Hafer that plaintiff "bought his job" was made both orally and in writing although plaintiff does not have a copy of that writing. Plaintiff does not know the precise dates of the defamatory communications but alleges that they occurred during the fall, 1988 campaign for the Office of Auditor General.

53. The statement made by Ms. Hafer in her letter of February 1, 1989 accusing plaintiff of involvement in a job buying and/or job promotion scheme in the Auditor General's Office and the public statements made by Ms. Hafer on February 1, 1989 that the persons she was firing, including plaintiff, had paid up to \$5,000 each for their jobs were re-publications of the original defamation made by Mr. West

and were due, in whole or in part, to Mr. West's aforesaid original defamation.

54. The aforesaid defamatory communication was false. Plaintiff had no involvement in any job buying and/or job promotion scheme in the Auditor General's office. Plaintiff did not provide money or anything of value to any person in connection with his employment, continued employment or the promotions he received during the course of his employment. Further, plaintiff has no knowledge that any third-person provided money or anything of value on plaintiff's behalf in connection with plaintiff's employment.

55. The aforesaid defamatory communication was made with malice, without reasonable cause, without a reasonable basis for Mr. West to believe that the statement was true, with knowledge that the statement was true and/or with reckless disregard for the truth or falsity of the statement and without privilege, absolute or qualified, and/or under circumstances which constitute an abuse of any qualified privilege.

56. Ms. Hafer and Mr. West engaged in concerted and conspiratorial conduct in creating a campaign issue during the fall 1988 campaign for the Auditor General's Office wherein allegations were made that Mr. West had provided Ms. Hafer with a list of twenty-one (21) employees who had bought their jobs. In engaging in said conspiracy, Mr. West and Ms. Hafer were motivated, in whole or in part, to enable Ms. Hafer to win the election. All statements made by Ms. Hafer during the course of the campaign that persons on the list bought their jobs and all statements made by Ms. Hafer after her election in connection with the firing of said persons, including plaintiff, were made in the course of and in furtherance of the aforesaid conspiracy and constituted re-publication of the original defamatory statements made by Mr. West with regard to providing Ms. Hafer with a copy of Exhibit "1" and advising Ms. Hafer that all persons whose names appeared on the list within Exhibit "1" had "bought their jobs." Accordingly, Mr. West is legally responsible for all damages sustained by plaintiff in connection with defamatory statements made by Ms. Hafer during the campaign and subsequent to her election.

57. As a result of the aforesaid defamation, plaintiff suffered loss of employment, loss of income, loss of earning capacity, loss of earning potential, damage to his reputation, standing and associations in his community, disability with regard to future employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage. Because of emotional upset caused by his firing, plaintiff suffered an aggravation of pre-existing Crone's disease which has caused him additional physical pain and suffering and has further caused him to incur medical expense all of which may continue into the indefinite future.

WHEREFORE, plaintiff claims compensatory damages of Mr. West in an amount of \$500,000.00 and punitive damages against Mr. West in the amount of \$500,000.00.

SIXTH COUNT

Plaintiff vs. Mr. West for Interference of Contractual and Prospective Contractual Relations (State Action)

58. Plaintiff re-alleges all preceding paragraphs.

59. In 1987 and 1988, plaintiff was an employee in the Office of the Auditor General of Pennsylvania. In accordance with the Policy and Procedural Manual in effect in 1988 and 1989, plaintiff had a reasonable expectation that his employment would continue if he properly performed his duties.

60. The communications made by Mr. West to Ms. Hafer during the Fall 1988 campaign, as aforesaid, constituted an intentional and improper and unprivileged interference with the employment relationship between plaintiff and the Office of the Auditor General of Pennsylvania, present and/or future. Mr. West induced Ms. Hafer to improperly terminate plaintiff's employment. Further, Mr. West intentionally, improperly and without privilege interfered with plaintiff's prospective employment in the Office of the Auditor General and caused the Auditor General, Ms. Hafer, not to continue plaintiff's employment and to terminate that employment.

61. As a result of Mr. West's tortious conduct as described in this Sixth Count, plaintiff suffered loss of employment, loss of income, loss of earning capacity, loss of earning potential,

damage to his reputation, standing and associations in his community, disability with regard to future employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage. Because of emotional upset caused by his firing, plaintiff suffered an aggravation of pre-existing Crone's disease which has caused him additional physical pain and suffering and has further caused him to incur medical expense all of which may continue into the indefinite future.

WHEREFORE, plaintiff claims compensatory damages in the amount of \$500,000.00 and punitive damages in the amount of \$500,000.00.

GROEN, LAVESON, GOLDBERG,
RUBENSTONE & FLAGER

By: /s/ William Goldstein

WILLIAM GOLDSTEIN, ESQ.
One Greenwood Square
Suite 101
Bensalem, PA 19020
(215) 638-9330
Counsel for Plaintiff

Dated: May 18, 1989

[Exhibit 1 included at JA-87]

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES C. MELO, JR.	:	CIVIL ACTION
	:	NO. 89-2935
vs.	:	
	:	
BARBARA HAFER	:	JURY TRIAL
and	:	DEMANDED
JAMES J. WEST, ESQUIRE	:	
<i>Defendants.</i>	:	

**ANSWER AND COUNTERCLAIM OF
DEFENDANT BARBARA HAFER**

1. Defendant Hafer is without knowledge or information sufficient to form a belief as to the truth or falsity of this averment.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted in part, denied in part. It is admitted that plaintiff was an employee of the Auditor General's Office from 1977 to 1989 but the remaining averments of this paragraph are denied because defendant Hafer is without knowledge of information sufficient to form a belief as to the truth or falsity of these averments.

7. Defendant Hafer is without knowledge or information sufficient to form a belief as to the truth or falsity of this averment.

8. Denied. It is averred on information and belief that plaintiff's promotion to Field Auditor III was purchased by virtue of a payment made by "Reds" Barbone to John Kerr, a former employee of the Department of Auditor General of Pennsylvania and a convicted felon, currently serving time in prison for his related, unlawful activities.

9. Admitted.

10. Admitted.

11. Defendant Hafer is without knowledge or information sufficient to form a belief as to the truth or falsity of this

averment. By way of further answer, defendant Hafer states that this so-called "investigation" was delegated by Mr. Bailey to James L. McAneny, who performed said "investigation" despite a conflict of interest arising from his prior association with the law office of Calvin Lieberman, at the same time that Lieberman represented John Kerr in the criminal investigation of Kerr for the job-buying scheme in the Auditor General's office for which Kerr eventually went to prison and McAneny's participation in the cover-up of this job-buying scheme which occurred during the Benedict administration.

12. Defendant Hafer is without knowledge or information sufficient to form a belief as to the truth or falsity of this averment.

13. Admitted.

14. Defendant Hafer is without knowledge or information sufficient to form a belief as to the truth or falsity of this averment.

15. Defendant Hafer is without knowledge or information sufficient to form a belief as to the truth or falsity of this averment.

16. Admitted.

17. Denied. Mr. West did not provide defendant Hafer with any such list prior to defendant Hafer's inauguration as Auditor General.

18. Defendant Hafer is without knowledge or information sufficient to form a belief as to the truth or falsity of this averment. By way of further answer, defendant Hafer denies that such list was provided prior to her inauguration.

19. Denied.

20. Denied. Defendant Hafer received no such list or information.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted.

25. Denied.

26. Denied. Subsequent to the election defendant Hafer and representatives from her office conducted an investigation in regard to the job-buying scheme.

27. Denied. By way of further answer, defendant Hafer avers that she had in her possession on February 1, 1989, extensive information learned as a result of the investigation referred to in paragraph 26.

28. Denied. The firing of plaintiff was not the result of joint, concerted and conspiratorial conduct between defendant Hafer and defendant West to create a campaign issue but instead, was the result of an investigation and a commitment to eliminate all public employees who had purchased their jobs as a result of the illegal job-buying scheme for which Benedict and Kerr are serving prison terms.

29. Denied as a conclusion of law to which no responsive pleading is required.

30. Admitted in part, denied in part. It is admitted in part that the Department of Auditor General has a policy procedure manual, copies of various sections of which were attached to the plaintiff's complaint. It is denied as a conclusion of law to which no responsive pleading is required that this manual provides the sole mechanism for disciplining, demoting or suspending employees.

31. Denied as a conclusion of law to which no responsive pleading is required. It is further denied because at all times, defendant Hafer complied with the requirements of due process and all applicable laws and regulations.

32. N/A.

33. Denied as a conclusion of law to which no responsive pleading is required.

34. Denied as a conclusion of law to which no responsive pleading is required.

35. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, defendant Hafer denies that plaintiff's firing was because of political affiliation as defendant Hafer was unaware of plaintiff's political affiliation.

36. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, defendant Hafer did not disseminate any statement identifying plaintiff.

37. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, defendant Hafer engaged in no conspiracy with Mr. West, was not provided with

a list of names prior to her inauguration as Auditor General and at all times, acted solely in the public interest.

38. Denied. Defendant Hafer did not deprive plaintiff of his civil rights. Defendant is without sufficient knowledge to form a belief as to the truth or falsity of the remaining averments of this paragraph.

39. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, defendant Hafer avers that plaintiff was properly the subject of discipline, demotion, suspension and/or dismissal because his job was purchased as part of the job-buying scheme for which former Auditor General Benedict and his deputy John Kerr have gone to prison.

40. Denied. Defendant Hafer did not act in concert or conspire with anyone to impede, hinder, obstruct and/or defeat the due course of justice by dismissing plaintiff or any other employees following her inauguration as Auditor General. Defendant Hafer fired employees whose jobs were purchased as part of the job-buying scheme and these dismissals complied with due process and all applicable regulations.

41. Defendant Hafer is without knowledge or information sufficient to form a belief as to the truth or falsity of this averment.

42. N/A.

43. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, defendant Hafer avers the firing of plaintiff was not motivated by an evil motive or intent and was not in wanton disregard of plaintiff's constitutional rights but was part of defendant Hafer's efforts to remove persons from the office of Auditor General who had purchased their jobs as part of the illegal job-buying scheme.

44. N/A.

45. Denies as a conclusion of law to which no responsive pleading is required.

46. N/A.

47. N/A.

48. N/A.

49. N/A.

50. N/A.

- 51. N/A.
- 52. N/A.
- 53. N/A.
- 54. N/A.
- 55. N/A.
- 56. N/A.
- 57. N/A.
- 58. N/A.
- 59. N/A.
- 60. N/A.
- 61. N/A.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.
2. Plaintiff's claims are barred by the doctrines of waiver and estoppel.
3. Plaintiff failed to mitigate his damages.
4. Plaintiff's punitive damage claims are invalid and improper and violate the United States and Pennsylvania Constitutions.
5. Plaintiff's claims are barred by the doctrine of unclean hands.
6. Plaintiff's claims are barred by the Eleventh Amendment.
7. Plaintiff's claims are barred by the doctrine of qualified immunity.
8. Plaintiff's claims are barred by the doctrine of exhaustion of remedies.
9. Plaintiff's claims are barred because plaintiff was provided with sufficient due process by virtue of the procedures provided by applicable laws and regulations pertaining to employees of the Auditor General.
10. Plaintiff's claims are barred for lack of jurisdiction.
11. Plaintiff's claims are barred because service of process was improper.

* * *

WHEREFORE, defendant Hafer requests that the Complaint be dismissed with prejudice and judgment be entered in favor of defendant Hafer.

Jerome R. Richter, Esquire
 Jay W. Eisenhofer, Esquire
 BLANK, ROME, COMISKY & MCCAULEY
 1200 Four Penn Center Plaza
 Philadelphia, PA 19103
 (215) 569-5500

Attorneys for Defendant,
 Pennsylvania Auditor General
 Barbara Hafer

Dated: August 9, 1989

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARL GURLEY

vs.

BARBARA HAFER

*Plaintiff**Defendant*

: CIVIL ACTION

: No. 89-2685

COMPLAINT

1. Plaintiff is an individual who resides at 1430 North Felton Street, Philadelphia, PA 19131. Plaintiff resides within the Eastern District of Pennsylvania.

2. Defendant is the duly elected Auditor General of the Commonwealth of Pennsylvania and maintains a regular place of business in the Office of the Auditor General, Harrisburg, PA, 17120. Plaintiff does not know Defendant's resident address.

3. From January, 1979 through February 21, 1989, Plaintiff was continuously employed by the Commonwealth of Pennsylvania in the Office of the Auditor General as an Investigator. During said period of time, Plaintiff received promotions and his work was uniformly rated as satisfactory or better than satisfactory.

4. From January, 1980 to February 21, 1989, Plaintiff was Special Agent in charge of Philadelphia Office of the Auditor General's Bureau of Investigations with his office at 1400 Spring Garden Street, Philadelphia, PA, which is within the Eastern District of Pennsylvania.

5. The position Plaintiff held with the Office of the Auditor General was not that of an advisor or formulator of plans for the implementation of broad goals. Plaintiff did not serve in a policy-making or confidential position. Party affiliation was not a necessary or appropriate requirement for the effective performance of Plaintiff's duties.

6. Plaintiff is a registered Democrat and has been so registered since 1955.

7. Defendant was elected to the position of Auditor General in the November, 1988 election and assumed the duties of her office January, 1989.

8. Defendant is a registered Republican and was elected to the position of Auditor General as the Republican candidate for that position.

9. The Auditor General before Defendant was Donald Bailey ("Mr. Bailey").

10. Mr. Bailey was defendant's opponent in the November, 1988 election and was the Democrat candidate for that office. Mr. Bailey lost the election to Defendant.

11. The personnel disciplinary powers of the Department of the Auditor General are governed by the same due process standards that control decisions by any prosecutorial or civil authority.

12. In or about January, 1986, the Department of Auditor General promulgated Policy Procedure Manual which has continued to be in full force and effect from January, 1986 to the present. Sections 200 and 300 of said Manual apply to Position Actions and Separations and specify the circumstances under which an employee of the Office of Auditor General may be disciplined, demoted, suspended or dismissed. Copies of Section 200 and 300 are attached hereto and marked Exhibit "1" and "2" respectively.

13. On February 21, 1989, Defendant discharged Plaintiff from employment. Defendant issued to Plaintiff and made part of Plaintiff's file a certain discharge letter dated February 21, 1989, a copy of which is attached hereto and marked Exhibit "3".

14. The Defendant has provided Plaintiff with no reason for his discharge.

FIRST COUNT

DEPRIVATION OF DUE PROCESS

15. Plaintiff re-alleges all preceding paragraphs.

16. When Defendant fired Plaintiff on or about February 21, 1989, Defendant, under color of law of the Commonwealth of Pennsylvania, subjected Plaintiff, a citizen of the United States to a deprivation of the rights, privileges and immunities secured by the Constitution and laws of the United States.

17. Defendant did not follow, comply or conform to the Policy and Procedure Manual of the Department of the Auditor

General with regard to position actions and separations as well as disciplinary actions and dismissal.

18. Defendant denied Plaintiff property and property rights without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and as guaranteed by the Federal Civil Rights Act, 42 U.S. Code, Section 1983.

19. As a result of the deprivations of Plaintiff's civil rights, as heretofore alleged, Plaintiff suffered loss of employment, loss of income, loss of earning capacity, loss of earning potential, damage to his reputation, standing and associations in his community, disability with regard to future employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage.

WHEREFORE, Plaintiff claims compensatory damages against Defendant for monetary losses and physical and emotional pain and suffering of \$500,000.00.

SECOND COUNT

DEPRIVATION OF FREEDOM OF SPEECH

20. Plaintiff re-alleges all preceding paragraphs.

21. Defendant fired Plaintiff because of Plaintiff's political affiliation to wit, the Plaintiff was a Democrat. In so doing Defendant caused Plaintiff to be deprived of his right to free speech in violation of the First Amendment to the Constitution of the United States and as guaranteed by the Federal Civil Rights Act, 42 U.S. Code, Section 1983.

22. As a result of the deprivations of Plaintiff's civil rights, as heretofore alleged, Plaintiff suffered loss of employment, loss of income, loss of earning capacity, loss of earning potential, damage to his reputation, standing and associations in his community, disability with regard to future employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage.

WHEREFORE, Plaintiff claims compensatory damages against Defendant for monetary losses and physical and emotional pain and suffering of \$500,000.00.

THIRD COUNT

PUNITIVE DAMAGES

23. Plaintiff re-alleges all preceding paragraphs.

24. When Defendant fired Plaintiff, Defendant was motivated by an evil motive and evil intent and acted with reckless and callous indifference to Plaintiff's federally protected rights. Defendant acted in bad faith, without reasonable cause, and in wanton disregard for Plaintiff's Constitutional rights. Defendant maliciously made charges stigmatizing Plaintiff's reputation.

WHEREFORE, Plaintiff claims punitive damages of Defendant in the amount of \$500,000.00.

FOURTH COUNT

COUNSEL FEES

25. Plaintiff re-alleges all preceding paragraphs.

26. Pursuant to the Federal Civil Rights Act, 42 U.S. Code, Section 1988, Plaintiff requests that the Court award and direct Defendant to pay Plaintiff's reasonable attorney's fees.

WHEREFORE, Plaintiff claims of defendant reasonable attorney fees in an amount not yet determined.

GROEN, LAVESON, GOLDBERG,
RUBENSTONE & FLAGER

By: /s/ William Goldstein

WILLIAM GOLDSTEIN, ESQUIRE

DATED: _____

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARL GURLEY	<i>Plaintiff,</i>	:	CIVIL ACTION
vs.		:	NO. 89-2615
		:	
BARBARA HAER	<i>Defendant.</i>	:	JURY TRIAL DEMANDED

ANSWER OF DEFENDANT TO COMPLAINT

1. Defendant is without sufficient knowledge to form a belief as to the truth or falsity of this averment.

2. Admitted.

3. Defendant is without sufficient knowledge to form a belief as to the truth or falsity of this averment.

4. Defendant is without sufficient knowledge to form a belief as to the truth or falsity of this averment.

5. Defendant is without sufficient knowledge to form a belief as to the truth or falsity of this averment.

6. Defendant is without sufficient knowledge to form a belief as to the truth or falsity of this averment.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Denied as a conclusion of law to which no responsive pleading is required.

12. Admitted in part, denied in part. It is admitted in part that the Department of Auditor General has a policy procedure manual, copies of various sections of which were attached to the plaintiff's complaint. It is denied as a conclusion of law to which no responsive pleading is required that this manual provides the sole mechanism for disciplining, demoting or suspending employees.

13. Admitted.

14. Denied. Plaintiff was discharged because his services were no longer needed.

15. N/A.

16. Denied as a conclusion of law to which no responsive pleading is required. It is further denied that defendant Haer deprived plaintiff of any rights secured by the Constitution and/or laws of the United States.

17. Denied as a conclusion of law to which no responsive pleading is required. It is further denied that the defendant failed to conform to controlling standards of laws and due process.

18. Denied as a conclusion of law to which no responsive pleading is required. It is further denied that the defendant failed to conform to controlling standards of law and due process.

19. Denied. Defendant Haer did not deprive plaintiff of his civil rights. Defendant is without sufficient knowledge to form a belief as to the truth or falsity of the remaining averments of this paragraph.

20. N/A.

21. Denied. Plaintiff's political affiliations played no part in defendant's decision to terminate plaintiff as defendant was unaware of said political affiliation.

22. Denied. Defendant Haer did not deprive plaintiff of his civil rights. Defendant is without sufficient knowledge to form a belief as to the truth or falsity of the remaining averments of this paragraph.

23. N/A.

24. Denied as a conclusion of law to which no responsive pleading is required. It is further denied that defendant was motivated by an evil motive and/or evil intent or that defendant acted in bad faith and with wanton disregard to plaintiff's constitutional rights.

25. N/A.

26. Denied as a conclusion of law to which no responsive pleading is required.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. Plaintiff's claims are barred by the doctrines of waiver and estoppel.

3. Plaintiff failed to mitigate his damages.
4. Plaintiff's punitive damage claims are invalid and improper and violate the Constitution.
5. Plaintiff's claims are barred by the doctrine of unclean hands.
6. Plaintiff's claims are barred by the Eleventh Amendment.
7. Plaintiff's claims are barred by the doctrine of qualified immunity.
8. Plaintiff's claims are barred by the doctrine of exhaustion of remedies.
9. Plaintiff's claims are barred because plaintiff was provided with sufficient due process by virtue of the procedures provided by applicable laws and regulations pertaining to employees of the Auditor General.
10. Plaintiff's claims are barred for lack of jurisdiction.
11. Plaintiff's claims are barred because service of process was improper.

WHEREFORE, defendant requests that this Honorable Court enter judgment in its favor and dismiss plaintiff's claims with prejudice.

/s/ JAY EISENHOFER

JEROME R. RICHTER, ESQUIRE
 JAY W. EISENHOFER, ESQUIRE
 BLANK, ROME, COMISKY & MCCAULEY
 1200 Four Penn Center Plaza
 Philadelphia, PA 19103
 (215) 569-5500

*Attorney for defendant,
 Barbara Hafer*

DATED: June 15, 1989

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

W. GERARD BEST

Plaintiff

vs.

BARBARA HAFER

Defendant

CIVIL ACTION

NO. 89-3847

COMPLAINT

1. Plaintiff is an individual who resides at 4932 Cedar Avenue, Philadelphia, PA 19143.
2. Defendant is the duly elected Auditor General of the Commonwealth of Pennsylvania and maintains a regular place of business in the Office of the Auditor General, Harrisburg, PA, 17120. Plaintiff does not know Defendant's resident address.
3. From February 4, 1985 through February 21, 1989, Plaintiff was continuously employed by the Commonwealth of Pennsylvania in the Office of the Auditor General as a Bureau Director. During said period of time, Plaintiff received promotions and his work was uniformly rated as satisfactory or better than satisfactory.
4. From February 4, 1985 until July, 1986, Plaintiff was the Director of the Bureau of Public Assistance Accounts and the Bureau of State Aid Audits. Both Bureaus are subdivisions with the Auditor General's Office.
5. The position Plaintiff held with the Office of the Auditor General was not that of an advisor or formulator of plans for the implementation of broad goals. Plaintiff did not serve in a policy-making or confidential position. Party affiliation was not a necessary or appropriate requirement for the effective performance of Plaintiff's duties.
6. Plaintiff is a registered Democrat and has been so registered since 1963. Plaintiff at all times relevant hereto has been a Democratic Committeeman in the 9th Division, 46th Ward in Philadelphia, PA.

7. Defendant was elected to the position of Auditor General in the November, 1988 election and assumed the duties of her office January, 1989.

8. Defendant is a registered Republican and was elected to the position of Auditor General as the Republican candidate for that position.

9. The Auditor General before Defendant was Donald Bailey ("Mr. Bailey").

10. Mr. Bailey was Defendant's opponent in the November, 1988 election and was the Democrat candidate for that office. Mr. Bailey lost the election to Defendant.

11. The personnel disciplinary powers of the Department of the Auditor General are governed by the same due process standards that control decisions by any prosecutorial or civil authority.

12. In or about January, 1986, the Department of Auditor General promulgated Policy Procedure Manual which has continued to be in full force and effect from January, 1986 to the present. Sections 200 and 300 of said Manual apply to Position Actions and Separations and specify the circumstances under which an employee of the Office of Auditor General may be disciplined, demoted, suspended or dismissed. Copies of Section 200 and 300 are attached hereto and marked Exhibit "1" and "2" respectively.

13. On February 21, 1989, Defendant discharged Plaintiff from employment. Defendant issued to Plaintiff and made part of Plaintiff's file a certain discharge letter dated February 21, 1989, a copy of which is attached hereto and marked Exhibit "3".

14. The Defendant has provided Plaintiff with no reason for his discharge.

FIRST COUNT

DEPRIVATION OF DUE PROCESS

15. Plaintiff re-alleges all preceding paragraphs.

16. When Defendant fired Plaintiff on or about February 21, 1989, Defendant, under color of law of the Commonwealth of Pennsylvania, subject Plaintiff, a citizen of the United States

to a deprivation of the rights, privileges and immunities secured by the Constitution and laws of the United States.

17. Defendant did not follow, comply or conform to the Policy and Procedure Manual of the Department of the Auditor General with regard to position actions and separations as well as disciplinary actions and dismissal.

18. Defendant denied Plaintiff property and property rights without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and as guaranteed by the Federal Civil Rights Act, 42 U.S. Code, Section 1983.

19. As a result of the deprivations of Plaintiff's civil rights, as heretofore alleged, Plaintiff suffered loss of employment, loss of income, loss of earning capacity, loss of earning potential, damage to his reputation, standing and associations in his community, disability with regard to future employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage.

WHEREFORE, Plaintiff claims compensatory damages against Defendant for monetary losses and physical and emotional pain and suffering of \$500,000.00.

SECOND COUNT

DEPRIVATION OF FREEDOM OF SPEECH

20. Plaintiff re-alleges all preceding paragraphs.

21. Defendant fired Plaintiff because of Plaintiff's political affiliation to wit, the Plaintiff was a Democrat. In so doing Defendant caused Plaintiff to be deprived of his right to free speech in violation of the First Amendment to the Constitution of the United States and as guaranteed by the Federal Civil Rights Act, 42 U.S. Code, Section 1983.

22. As a result of the deprivations of Plaintiff's civil rights, as heretofore alleged, Plaintiff suffered loss of employment, loss of income, loss of earning capacity, loss of earning potential, damage to his reputation, standing and associations in his community, disability with regard to future employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage.

WHEREFORE, Plaintiff claims compensatory damages against Defendant for monetary losses and physical and emotional pain and suffering of \$500,000.00

THIRD COUNT PUNITIVE DAMAGES

23. Plaintiff re-alleges all preceding paragraphs.

24. When Defendant fired Plaintiff, Defendant was motivated by an evil motive and evil intent and acted with reckless and callous indifference to Plaintiff's federally protected rights. Defendant acted in bad faith, without reasonable cause, and in wanton disregard for Plaintiff's Constitutional rights. Defendant maliciously made charges stigmatizing Plaintiff's reputation.

WHEREFORE, Plaintiff claims punitive damages of Defendant in the amount of \$500,000.00

FOURTH COUNT COUNSEL FEES

25. Plaintiff re-alleges all preceding paragraphs.

26. Pursuant to the Federal Civil Rights Act, 42 U.S. Code, Section 1988, Plaintiff requests that the Court award and direct Defendant to pay Plaintiff's reasonable attorney's fees.

WHEREFORE, Plaintiff claims of Defendant reasonable attorney fees in an amount not yet determined.

GROEN, LAVESON, GOLDBERG,
RUBENSTONE & FLAGER

By: /s/

WILLIAM GOLDSTEIN, ESQUIRE

Dated: May 15, 1989

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL BRENNAN,	:	CIVIL ACTION
MARGARET CASPER,	:	
ELIZABETH BUCHMILLER,	:	
DANIEL CLEMSON,	:	
MARY FAGER, and	:	
GEORGE A. FRANKLIN, JR.	:	
vs.	:	
BARBARA HAFER	:	NO. 89-4950

COMPLAINT

The Parties

1. Plaintiff Michael Brennan is an individual who resides in Pottsville, Pennsylvania.

2. Plaintiff Margaret Casper is an individual who resides in Palmyra, Pennsylvania.

3. Plaintiff Elizabeth Buchmiller is an individual who resides in Whitehall, Pennsylvania.

4. Plaintiff Daniel Clemson is an individual who resides in Mechanicsburg, Pennsylvania.

5. Plaintiff Mary Fager is an individual who resides in Harrisburg, Pennsylvania.

6. Plaintiff George A. Franklin, Jr. is an individual who resides in Harrisburg, Pennsylvania.

7. Defendant Barbara Hafer ("Ms. Hafer") is the current Auditor General of the Commonwealth of Pennsylvania and maintains regular places of business for the Office of the Auditor General through Pennsylvania including the Eastern District of Pennsylvania. Plaintiffs do not know Ms. Hafer's resident address.

JURISDICTION

8. This is an action to redress the deprivation, under color of Pennsylvania Law, of rights and privileges secured to plaintiffs by the Constitution of the United States together with

pendent state court claims. Jurisdiction arises under 42 U.S.C. 1983, 1985 and 1988 and 28 U.S.C. 1343 and pendent jurisdiction.

9. This action is related to the cases of *Best vs. Hafer*, C.A. 89-3847 and *Gurley vs. Hafer*, C.A. 89-2685 filed in the United States District Court for the Eastern District of Pennsylvania. Plaintiffs have asserted the same causes of action against the same defendant as asserted in the *Best* and *Gurley* Complaints. All plaintiffs herein were fired on February 21, 1989 like Mr. Best and Mr. Gurley, because of political association and affiliation, and not because of job performance.

STATEMENT OF OPERATIVE FACTS

10. For many years prior to February 21, 1989, plaintiffs were continuously employed by the Commonwealth of Pennsylvania in the Office of the Auditor General. During said period of time, plaintiffs received promotions and their work was often rated as satisfactory or better than satisfactory.

11. The position each plaintiff held with the Office of the Auditor General was not that of an advisor or formulator of plans for implementation of broad goals. Plaintiffs did not serve in a policy-making or confidential position. Party affiliation was not a necessary or appropriate requirement for the effective performance of plaintiffs' duties.

12. All plaintiffs except Mary Fager are registered democrats and were so registered during their period of employment with the Office of the Auditor General.

13. Defendant was elected to the position of Auditor General in the November 1988 election and assumed the duties of her office January 1989.

14. Defendant is a registered republican and was elected to the position of Auditor General as the republican candidate for that position.

15. The Auditor General before defendant was Donald Bailey ("Mr. Bailey").

16. Mr. Bailey was defendant's opponent in the November 1988 election and was the democratic candidate for that office. Mr. Bailey lost the election to defendant.

17. The personnel disciplinary powers of the Department of the Auditor General are governed by the same due process standards that control decisions by any prosecutorial or civil authority.

18. In or about January 1986, the Office of the Auditor General promulgated a Policy and Procedure Manual which has continued to be in full force and effect from January 1986 to the present. Sections 200 and 300 of said Manual apply to position actions and separations and specify the circumstances under which an employee of the Office of the Auditor General may be disciplined, demoted, suspended or dismissed. Copies of Sections 200 and 300 are attached hereto and marked Exhibits "1" and "2" respectively.

19. On February 21, 1989, defendant discharged plaintiffs from employment. Defendant issued to each plaintiff and made part of plaintiffs' files a certain discharge letter dated February 21, 1989, copies of which are attached hereto and marked Exhibits "3", "4", "5", "6", "7", and "8".

20. The defendant has provided plaintiffs with no reason for their discharge.

21. The defendant did not discharge any plaintiff because of unsatisfactory job performance.

FIRST COUNT

*Plaintiff Michael Brennan vs. Defendant
For Deprivation of Due Process (Monetary Damages)*

22. Plaintiff Michael Brennan re-alleges all preceding paragraphs.

23. When defendant fired plaintiff on or about February 21, 1989, defendant, under color of law of the Commonwealth of Pennsylvania, subjected plaintiff, a citizen of the United States to a deprivation of the rights, privileges and immunities secured by the Constitution and laws of the United States.

24. Defendant did not follow, comply or conform to the Policy and Procedure Manual of the Office of the Auditor General with regard to position actions and separations as well as disciplinary actions and dismissal.

25. Defendant denied plaintiff property and property rights without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and as guaranteed by the Federal Civil Rights Act, 42 U.S.C. Section 1983.

26. As a result of the deprivation of plaintiff's civil rights, as heretofore alleged, plaintiff suffered loss of employment, loss of income, loss of accrued and future fringe benefits including sick and vacation pay and pension rights, loss of earning capacity, loss of earning potential, damage to his reputation, standing and association in his community, disability with regard to future employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage.

WHEREFORE, plaintiff Michael Brennan claims compensatory damages against defendant for monetary losses and physical and emotional pain and suffering of \$500,000.00.

SECOND COUNT

*Plaintiff Michael Brennan vs. Defendant
For Deprivation of Freedom of Speech (Monetary Damages)*

27. Plaintiff Michael Brennan re-alleges all preceding paragraphs.

28. Defendant fired plaintiff because of plaintiff's political affiliation and because of plaintiff's political association with and support for Mr. Bailey. In so doing, defendant caused plaintiff to be deprived of his right of free speech, free association and political association in violation of the First Amendment to the Constitution of the United States and as guaranteed by the Federal Civil Rights Act, 42 U.S.C. Section 1983.

29. As a result of the deprivation of plaintiff's civil rights, as heretofore alleged, plaintiff suffered loss of employment, loss of income, loss of accrued and future fringe benefits including sick and vacation pay and pension rights, loss of earning capacity, loss of earning potential, damage to his reputation, standing and association in his community, disability with regard to future employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage.

WHEREFORE, plaintiff Michael Brennan claims compensatory damages against defendant for monetary losses and physical and emotional pain and suffering of \$500,000.00.

THIRD COUNT

*Plaintiff Michael Brennan vs. Defendant
For Punitive Damages (Monetary Damages)*

30. Plaintiff Michael Brennan re-alleges all preceding paragraphs.

31. When defendant fired plaintiff, defendant was motivated by an evil motive and evil intent and acted with reckless and callous indifference to plaintiff's federally protected rights. Defendant acted in bad faith, without reasonable cause, and in wanton disregard for plaintiff's constitutional rights. Defendant maliciously made charges stigmatizing plaintiff's reputation.

WHEREFORE, plaintiff Michael Brennan claims punitive damages of defendant in the amount of \$500,000.00

FOURTH COUNT

*Plaintiff Michael Brennan vs. Defendant
For Non-Monetary Relief*

32. Plaintiff Michael Brennan re-alleges all preceding paragraphs.

33. By reason of the foregoing, plaintiff is entitled to and requests reinstatement and restoration of all accrued fringe benefits. Plaintiff does not request back pay in this Fourth Count because said Count is asserted against the defendant in her official capacity. The first three Counts are asserted against the defendant in her personal capacity.

WHEREFORE, plaintiff Michael Brennan demands that defendant in her official capacity re-hire plaintiff and restore to plaintiff all accrued fringe benefits.

FIFTH COUNT

*Plaintiff Michael Brennan vs. Defendant
For Counsel Fees*

34. Plaintiff Michael Brennan re-alleges all preceding paragraphs.

35. Pursuant to the Federal Civil Rights Act, 42 U.S.C., Section 1988, plaintiff requests that the Court award and direct defendant to pay plaintiff's reasonable attorney's fees.

WHEREFORE, plaintiff Michael Brennan claims of defendant reasonable attorney's fees in an amount not yet determined.

SIXTH COUNT

*Plaintiff Margaret Casper vs. Defendant
For Deprivation of Due Process (Monetary Damages)*

36. Plaintiff Margaret Casper re-alleges all preceding paragraphs.

37. When defendant fired plaintiff on or about February 21, 1989, defendant, under color of law of the Commonwealth of Pennsylvania, subjected plaintiff, a citizen of the United States to a deprivation of the rights, privileges and immunities secured by the Constitution and laws of the United States.

38. Defendant did not follow, comply or conform to the Policy and Procedure Manual of the Office of the Auditor General with regard to position actions and separations as well as disciplinary actions and dismissal.

39. Defendant denied plaintiff property and property rights without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and as guaranteed by the Federal Civil Rights Act, 42 U.S.C. Section 1983.

40. As a result of the deprivation of plaintiff's civil rights, as heretofore alleged, plaintiff suffered loss of employment, loss of income, loss of accrued and future fringe benefits including sick and vacation pay and pension rights, loss of earning capacity, loss of earning potential, damage to her reputation, standing and association in her community, disability with regard to future

employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage.

WHEREFORE, plaintiff Margaret Casper claims compensatory damages against defendant for monetary losses and physical and emotional pain and suffering of \$500,000.00.

SEVENTH COUNT

*Plaintiff Margaret Casper vs. Defendant
For Deprivation of Freedom of Speech (Monetary Damages)*

41. Plaintiff Margaret Casper re-alleges all preceding paragraphs.

42. Defendant fired plaintiff because of plaintiff's political affiliation and because of plaintiff's political association with and support for Mr. Bailey. In so doing, defendant caused plaintiff to be deprived of her right of free speech, free association and political association in violation of the First Amendment to the Constitution of the United States and as guaranteed by the Federal Civil Rights Act, 42 U.S.C. Section 1983.

43. As a result of the deprivation of plaintiff's civil rights, as heretofore alleged, plaintiff suffered loss of employment, loss of income, loss of accrued and future fringe benefits including sick and vacation pay and pension rights, loss of earning capacity, loss of earning potential, damage to her reputation, standing and association in her community, disability with regard to future employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage.

WHEREFORE, plaintiff Margaret Casper claims compensatory damages against defendant for monetary losses and physical and emotional pain and suffering of \$500,000.00.

EIGHTH COUNT

*Plaintiff Margaret Casper vs. Defendant
For Punitive Damages (Monetary Damages)*

44. Plaintiff Margaret Casper re-alleges all preceding paragraphs.

45. When defendant fired plaintiff, defendant was motivated by an evil motive and evil intent and acted with reckless

and callous indifference to plaintiff's federally protected rights. Defendant acted in bad faith, without reasonable cause, and in wanton disregard for plaintiff's constitutional rights. Defendant maliciously made charges stigmatizing plaintiff's reputation.

WHEREFORE, plaintiff Margaret Casper claims punitive damages of defendant in the amount of \$500,000.00.

NINTH COUNT

*Plaintiff Margaret Casper vs. Defendant
For Non-Monetary Relief*

46. Plaintiff Margaret Casper re-alleges all preceding paragraphs.

47. By reason of the foregoing, plaintiff is entitled to and requests reinstatement and restoration of all accrued fringe benefits. Plaintiff does not request back pay in this Ninth Count because said Count is asserted against the defendant in her official capacity. Counts 6, 7 and 8 are asserted against the defendant in her personal capacity.

WHEREFORE, plaintiff Margaret Casper demands that defendant in her official capacity re-hire plaintiff and restore to plaintiff all accrued fringe benefits.

TENTH COUNT

*Plaintiff Margaret Casper vs. Defendant
For Counsel Fees*

48. Plaintiff Margaret Casper re-alleges all preceding paragraphs.

49. Pursuant to the Federal Civil Rights Act, 42 U.S.C., Section 1988, plaintiff requests that the Court award and direct defendant to pay plaintiff's reasonable attorney's fees.

WHEREFORE, plaintiff Margaret Casper claims of defendant reasonable attorney's fees in an amount not yet determined.

ELEVENTH COUNT

*Plaintiff Elizabeth Buchmiller vs. Defendant
For Deprivation of Due Process (Monetary Damages)*

50. Plaintiff Elizabeth Buchmiller re-alleges all preceding paragraphs.

51. When defendant fired plaintiff on or about February 21, 1989, defendant, under color of law of the Commonwealth of Pennsylvania, subjected plaintiff, a citizen of the United States to a deprivation of the rights, privileges and immunities secured by the Constitution and laws of the United States.

52. Defendant did not follow, comply or conform to the Policy and Procedure Manual of the Office of the Auditor General with regard to position actions and separations as well as disciplinary actions and dismissal.

53. Defendant denied plaintiff property and property rights without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and as guaranteed by the Federal Civil Rights Act, 42 U.S.C. Section 1983.

54. As a result of the deprivation of plaintiff's civil rights, as heretofore alleged, plaintiff suffered loss of employment, loss of income, loss of accrued and future fringe benefits including sick and vacation pay and pension rights, loss of earning capacity, loss of earning potential, damage to her reputation, standing and association in her community, disability with regard to future employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage.

WHEREFORE, plaintiff Elizabeth Buchmiller claims compensatory damages against defendant for monetary losses and physical and emotional pain and suffering of \$500,000.00.

TWELFTH COUNT

*Plaintiff Elizabeth Buchmiller vs. Defendant
For Deprivation of Freedom of Speech (Monetary Damages)*

55. Plaintiff Elizabeth Buchmiller re-alleges all preceding paragraphs.

56. Defendant fired plaintiff because of plaintiff's political affiliation and because of plaintiff's political association with and support for Mr. Bailey. In so doing, defendant caused plaintiff to be deprived of her right of free speech, free association and political association in violation of the First Amendment to the Constitution of the United States and as guaranteed by the Federal Civil Rights Act, 42 U.S.C. Section 1983.

57. As a result of the deprivation of plaintiff's civil rights, as heretofore alleged, plaintiff suffered loss of employment, loss of income, loss of accrued and future fringe benefits including sick and vacation pay and pension rights, loss of earning capacity, loss of earning potential, damage to her reputation, standing and association in her community, disability with regard to future employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage.

WHEREFORE, plaintiff Elizabeth Buchmiller claims compensatory damages against defendant for monetary losses and physical and emotional pain and suffering of \$500,000.00.

THIRTEENTH COUNT

*Plaintiff Elizabeth Buchmiller vs. Defendant
For Punitive Damages (Monetary Damages)*

58. Plaintiff Elizabeth Buchmiller re-alleges all preceding paragraphs.

59. When defendant fired plaintiff, defendant was motivated by an evil motive and evil intent and acted with reckless and callous indifference to plaintiff's federally protected rights. Defendant acted in bad faith, without reasonable cause, and in wanton disregard for plaintiff's constitutional rights. Defendant maliciously made charges stigmatizing plaintiff's reputation.

WHEREFORE, plaintiff Elizabeth Buchmiller claims punitive damages of defendant in the amount of \$500,000.00.

FOURTEENTH COUNT

*Plaintiff Elizabeth Buchmiller vs. Defendant
For Non-Monetary Relief*

60. Plaintiff Elizabeth Buchmiller re-alleges all preceding paragraphs.

61. By reason of the foregoing, plaintiff is entitled to and requests reinstatement and restoration of all accrued fringe benefits. Plaintiff does not request back pay in this Ninth Count because said Count is asserted against the defendant in her official capacity. Counts 11, 12 and 13 are asserted against the defendant in her personal capacity.

WHEREFORE, plaintiff Elizabeth Buchmiller demands that defendant in her official capacity re-hire plaintiff and restore to plaintiff all accrued fringe benefits.

FIFTEENTH COUNT

*Plaintiff Elizabeth Buchmiller vs. Defendant
For Counsel Fees*

62. Plaintiff Elizabeth Buchmiller re-alleges all preceding paragraphs.

63. Pursuant to the Federal Civil Rights Act, 42 U.S.C., Section 1988, plaintiff requests that the Court award and direct defendant to pay plaintiff's reasonable attorney's fees.

WHEREFORE, plaintiff Elizabeth Buchmiller claims of defendant reasonable attorney's fees in an amount not yet determined.

SIXTEENTH COUNT

*Plaintiff Daniel Clemson vs. Defendant
For Deprivation of Due Process (Monetary Damages)*

64. Plaintiff Daniel Clemson re-alleges all preceding paragraphs.

65. When defendant fired plaintiff on or about February 21, 1989, defendant, under color of law of the Commonwealth of Pennsylvania, subjected plaintiff, a citizen of the United States

to a deprivation of the rights, privileges and immunities secured by the Constitution and laws of the United States.

66. Defendant did not follow, comply or conform to the Policy and Procedure Manual of the Office of the Auditor General with regard to position actions and separations as well as disciplinary actions and dismissal.

67. Defendant denied plaintiff property and property rights without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and as guaranteed by the Federal Civil Rights Act, 42 U.S.C. Section 1983.

68. As a result of the deprivation of plaintiff's civil rights, as heretofore alleged, plaintiff suffered loss of employment, loss of income, loss of accrued and future fringe benefits including sick and vacation pay and pension rights, loss of earning capacity, loss of earning potential, damage to his reputation, standing and association in his community, disability with regard to future employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage.

WHEREFORE, plaintiff Daniel Clemson claims compensatory damages against defendant for monetary losses and physical and emotional pain and suffering of \$500,000.00.

SEVENTEENTH COUNT

*Plaintiff Daniel Clemson vs. Defendant
For Deprivation of Freedom of Speech (Monetary Damages)*

69. Plaintiff Daniel Clemson re-alleges all preceding paragraphs.

70. Defendant fired plaintiff because of plaintiff's political affiliation and because of plaintiff's political association with and support for Mr. Bailey. In so doing, defendant caused plaintiff to be deprived of his right of free speech, free association and political association in violation of the First Amendment to the Constitution of the United States and as guaranteed by the Federal Civil Rights Act, 42 U.S.C. Section 1983.

71. As a result of the deprivation of plaintiff's civil rights, as heretofore alleged, plaintiff suffered loss of employment, loss of income, loss of accrued and future fringe benefits including sick

and vacation pay and pension rights, loss of earning capacity, loss of earning potential, damage to his reputation, standing and association in his community, disability with regard to future employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage.

WHEREFORE, plaintiff Daniel Clemson claims compensatory damages against defendant for monetary losses and physical and emotional pain and suffering of \$500,000.00.

EIGHTEENTH COUNT

*Plaintiff Daniel Clemson vs. Defendant
For Punitive Damages (Monetary Damages)*

72. Plaintiff Daniel Clemson re-alleges all preceding paragraphs.

73. When defendant fired plaintiff, defendant was motivated by an evil motive and evil intent and acted with reckless and callous indifference to plaintiff's federally protected rights. Defendant acted in bad faith, without reasonable cause, and in wanton disregard for plaintiff's constitutional rights. Defendant maliciously made charges stigmatizing plaintiff's reputation.

WHEREFORE, plaintiff Daniel Clemson claims punitive damages of defendant in the amount of \$500,000.00.

NINETEENTH COUNT

*Plaintiff Daniel Clemson vs. Defendant
For Non-Monetary Relief*

74. Plaintiff Daniel Clemson re-alleges all preceding paragraphs.

75. By reason of the foregoing, plaintiff is entitled to and requests reinstatement and restoration of all accrued fringe benefits. Plaintiff does not request back pay in this Fourth Count because said Count is asserted against the defendant in her official capacity. Counts 16, 17 and 18 are asserted against the defendant in her personal capacity.

WHEREFORE, plaintiff Daniel Clemson demands that defendant in her official capacity re-hire plaintiff and restore to plaintiff all accrued fringe benefits.

TWENTIETH COUNT

*Plaintiff Daniel Clemson vs. Defendant
For Counsel Fees*

76. Plaintiff Daniel Clemson re-alleges all preceding paragraphs.

77. Pursuant to the Federal Civil Rights Act, 42 U.S.C., Section 1988, plaintiff requests that the Court award and direct defendant to pay plaintiff's reasonable attorney's fees.

WHEREFORE, plaintiff Daniel Clemson claims of defendant reasonable attorney's fees in an amount not yet determined.

TWENTY-FIRST COUNT

*Plaintiff Mary Fager vs. Defendant
For Deprivation of Due Process (Monetary Damages)*

78. Plaintiff Mary Fager re-alleges all preceding paragraphs.

79. When defendant fired plaintiff on or about February 21, 1989, defendant, under color of law of the Commonwealth of Pennsylvania, subjected plaintiff, a citizen of the United States to a deprivation of the rights, privileges and immunities secured by the Constitution and laws of the United States.

80. Defendant did not follow, comply or conform to the Policy and Procedure Manual of the Office of the Auditor General with regard to position actions and separations as well as disciplinary actions and dismissal.

81. Defendant denied plaintiff property and property rights without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and as guaranteed by the Federal Civil Rights Act, 42 U.S.C. Section 1983.

82. As a result of the deprivation of plaintiff's civil rights, as heretofore alleged, plaintiff suffered loss of employment, loss of income, loss of accrued and future fringe benefits including sick and vacation pay and pension rights, loss of earning capacity, loss of earning potential, damage to her reputation, standing and association in her community, disability with regard to future

employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage.

WHEREFORE, plaintiff Mary Fager claims compensatory damages against defendant for monetary losses and physical and emotional pain and suffering of \$500,000.00.

TWENTY-SECOND COUNT

*Plaintiff Mary Fager vs. Defendant
For Deprivation of Freedom of Speech (Monetary Damages)*

83. Plaintiff Mary Fager re-alleges all preceding paragraphs.

84. Defendant fired plaintiff because of plaintiff's political association with and support for Mr. Bailey. In so doing, defendant caused plaintiff to be deprived of her right of free speech, free association and political association in violation of the First Amendment to the Constitution of the United States and as guaranteed by the Federal Civil Rights Act, 42 U.S.C. Section 1983.

85. As a result of the deprivation of plaintiff's civil rights, as heretofore alleged, plaintiff suffered loss of employment, loss of income, loss of accrued and future fringe benefits including sick and vacation pay and pension rights, loss of earning capacity, loss of earning potential, damage to her reputation, standing and association in her community, disability with regard to future employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage.

WHEREFORE, plaintiff Mary Fager claims compensatory damages against defendant for monetary losses and physical and emotional pain and suffering of \$500,000.00.

TWENTY-THIRD COUNT

*Plaintiff Mary Fager vs. Defendant
For Punitive Damages (Monetary Damages)*

86. Plaintiff Mary Fager re-alleges all preceding paragraphs

87. When defendant fired plaintiff, defendant was motivated by an evil motive and evil intent and acted with reckless and callous indifference to plaintiff's federally protected rights. Defendant acted in bad faith, without reasonable cause, and in wanton disregard for plaintiff's constitutional rights. Defendant maliciously made charges stigmatizing plaintiff's reputation.

WHEREFORE, plaintiff Mary Fager claims punitive damages of defendant in the amount of \$500,000.00.

TWENTY-FOURTH COUNT

*Plaintiff Mary Fager vs. Defendant
For Non-Monetary Relief*

88. Plaintiff Mary Fager re-alleges all preceding paragraphs.

89. By reason of the foregoing, plaintiff is entitled to and requests reinstatement and restoration of all accrued fringe benefits. Plaintiff does not request back pay in this Ninth Count because said Count is asserted against the defendant in her official capacity. Counts 21, 22 and 23 are asserted against the defendant in her personal capacity.

WHEREFORE, plaintiff Mary Fager demands that defendant in her official capacity re-hire plaintiff and restore to plaintiff all accrued fringe benefits.

TWENTY-FIFTH COUNT

*Plaintiff Mary Fager vs. Defendant
For Counsel Fees*

90. Plaintiff Mary Fager re-alleges all preceding paragraphs.

91. Pursuant to the Federal Civil Rights Act, 42 U.S.C., Section 1988, plaintiff requests that the Court award and direct defendant to pay plaintiff's reasonable attorney's fees,

WHEREFORE, plaintiff Mary Fager claims of defendant reasonable attorney's fees in an amount not yet determined.

TWENTY-SIXTH COUNT

*Plaintiff George A. Franklin, Jr. vs. Defendant
For Deprivation of Due Process (Monetary Damages)*

92. Plaintiff George A. Franklin, Jr. re-alleges all preceding paragraphs.

93. When defendant fired plaintiff on or about February 21, 1989, defendant, under color of law of the Commonwealth of Pennsylvania, subjected plaintiff, a citizen of the United States to a deprivation of the rights, privileges and immunities secured by the Constitution and laws of the United States.

94. Defendant did not follow, comply or conform to the Policy and Procedure Manual of the Office of the Auditor General with regard to position actions and separations as well as disciplinary actions and dismissal.

95. Defendant denied plaintiff property and property rights without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and as guaranteed by the Federal Civil Rights Act, 42 U.S.C. Section 1983.

96. As a result of the deprivation of plaintiff's civil rights, as heretofore alleged, plaintiff suffered loss of employment, loss of income, loss of accrued and future fringe benefits including sick and vacation pay and pension rights, loss of earning capacity, loss of earning potential, damage to his reputation, standing and association in his community, disability with regard to future employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage.

WHEREFORE, plaintiff George A. Franklin, Jr. claims compensatory damages against defendant for monetary losses and physical and emotional pain and suffering of \$500,000.00.

TWENTY-SEVENTH COUNT

*Plaintiff George A. Franklin, Jr. vs. Defendant
For Deprivation of Freedom of Speech (Monetary Damages)*

97. Plaintiff George A. Franklin, Jr. re-alleges all preceding paragraphs.

98. Defendant fired plaintiff because of plaintiff's political affiliation and because of plaintiff's political association with and support for Mr. Bailey. In so doing, defendant caused plaintiff to be deprived of his right of free speech, free association and political association in violation of the First Amendment to the Constitution of the United States and as guaranteed by the Federal Civil Rights Act, 42 U.S.C. Section 1983.

99. As a result of the deprivation of plaintiff's civil rights, as heretofore alleged, plaintiff suffered loss of employment, loss of income, loss of accrued and future fringe benefits including sick and vacation pay and pension rights, loss of earning capacity, loss of earning potential, damage to his reputation, standing and association in his community, disability with regard to future employment and other employment opportunities, emotional upset, aggravation, indignation, anxiety and outrage.

WHEREFORE, plaintiff George A. Franklin, Jr. claims compensatory damages against defendant for monetary losses and physical and emotional pain and suffering of \$500,000.00.

TWENTY-EIGHTH COUNT

*Plaintiff George A. Franklin, Jr. vs. Defendant
For Punitive Damages (Monetary Damages)*

100. Plaintiff George A. Franklin, Jr. re-alleges all preceding paragraphs.

101. When defendant fired plaintiff, defendant was motivated by an evil motive and evil intent and acted with reckless and callous indifference to plaintiff's federally protected rights. Defendant acted in bad faith, without reasonable cause, and in wanton disregard for plaintiff's constitutional rights. Defendant maliciously made charges stigmatizing plaintiff's reputation.

WHEREFORE, plaintiff George A. Franklin, Jr. claims punitive damages of defendant in the amount of \$500,000.00.

TWENTY-NINTH COUNT

*Plaintiff George A. Franklin, Jr. vs. Defendant
For Non-Monetary Relief*

102. Plaintiff George A. Franklin, Jr. re-alleges all preceding paragraphs.

103. By reason of the foregoing, plaintiff is entitled to and requests reinstatement and restoration of all accrued fringe benefits. Plaintiff does not request back pay in this Fourth Count because said Count is asserted against the defendant in her official capacity. Counts 26, 27 and 28 are asserted against the defendant in her personal capacity.

WHEREFORE, plaintiff George A. Franklin, Jr. demands that defendant in her official capacity re-hire plaintiff and restore to plaintiff all accrued fringe benefits.

THIRTIETH COUNT

*Plaintiff George A. Franklin, Jr. vs. Defendant
For Counsel Fees*

104. Plaintiff George A. Franklin, Jr. re-alleges all preceding paragraphs.

105. Pursuant to the Federal Civil Rights Act, 42 U.S.C., Section 1988, plaintiff requests that the Court award and direct defendant to pay plaintiff's reasonable attorney's fees.

WHEREFORE, plaintiff George A. Franklin, Jr. claims of defendant reasonable attorney's fees in an amount not yet determined.

GROEN, LAVESON, GOLDBERG,
RUBENSTONE & FLAGER

BY: /s/ WILLIAM GOLDSTEIN

WILLIAM GOLDSTEIN
Attorney for Plaintiffs

JA-56

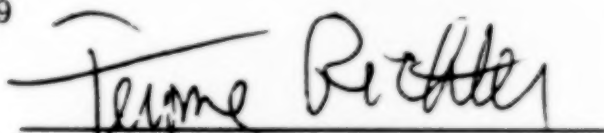
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES C. MELO, JR., et al.	:	CIVIL ACTION
<i>Plaintiffs,</i>	:	NO. 89-2935
v.	:	
BARBARA HAFER	:	
and	:	
JAMES J. WEST, ESQUIRE	:	
<i>Defendants.</i>	:	
CARL GURLEY, et al.	:	CIVIL ACTION
<i>Plaintiffs,</i>	:	NO. 89-2685
v.	:	
BARBARA HAFER	:	
<i>Defendant</i>	:	

MOTION OF DEFENDANT BARBARA HAFER
FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, defendant Barbara Hafer hereby requests that this Court enter summary judgment in her favor and dismiss the above-captioned cases.

Dated: August 9, 1989



Jerome R. Richter, Esquire
Jay W. Eisenhofer, Esquire
BLANK, ROME, COMISKY & MCCAULEY
1200 Four Penn Center Plaza
Philadelphia, PA 19103
(215) 569-5500

Attorneys for Defendant,
Pennsylvania Auditor General
Barbara Hafer

JA-57

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES C. MELO, JR., et al.	:	CIVIL ACTION
<i>Plaintiffs,</i>	:	NO. 89-2935
v.	:	
BARBARA HAFER	:	
and	:	
JAMES J. WEST, ESQUIRE	:	
<i>Defendants.</i>	:	
CARL GURLEY, et al.	:	CIVIL ACTION
<i>Plaintiffs,</i>	:	NO. 89-2685
v.	:	
BARBARA HAFER	:	
<i>Defendant</i>	:	

APPENDIX OF EXHIBITS TO
BARBARA HAFER'S MEMORANDUM IN SUPPORT
OF HER MOTION FOR SUMMARY JUDGMENT

Dated: August 9, 1989

Jerome R. Richter, Esquire
Jay W. Eisenhofer, Esquire
BLANK, ROME, COMISKY & MCCAULEY
1200 Four Penn Center Plaza
Philadelphia, PA 19103
(215) 569-5500

Attorneys for Defendant,
Pennsylvania Auditor General
Barbara Hafer

INDEX OF EXHIBITS

TAB	EXHIBITS
1	Answer and Counterclaim of Defendant Barbara Hafer including John Kerr's Affidavit as Exhibit "A".
2	Newspaper Articles.
3	Declaration of Defendant Barbara Hafer.
4	Letter from Barbara Hafer to James West dated 10/6/88.
5	Letter from James West to Barbara Hafer dated 10/19/88.
6	WQED-People's Business Auditor-General Debate Transcript recorded on 10/24/89.
7	Declaration of Charles Morse.
8	Letter dated 10/28/88 from Barbara Hafer to James West.
9	Letter dated 10/4/88 from Charles Lewis to James West.
10	Letter dated 11/15/88 from Barbara Hafer to James West.
11	Letter dated 11/23/88 from James West to Barbara Hafer.
12	Letter dated 1/21/88 from James West to Don Bailey.
13	Letter dated 6/21/88 from James West to Donald Bailey.
14	FBI Summaries.
15	Affidavit of James McAneny.
16	Witness Statements from James McAneny's investigation.
17	Declaration of Barbara B. Christianson.
18	Press Release dated February 1, 1989.
19	Termination Letter of James C. Melo, Jr. dated February 1, 1989.
20	Termination Letter of John Weikel dated February 1, 1989.
21	Termination Letter of Lucille Russell dated February 1, 1989.
22	Termination Letter of Walter Speelman dated February 1, 1989.

23	Termination Letter of Don Ruggerio dated February 1, 1989.
24	Termination Letter of James Dicosimo dated February 1, 1989.
25	Termination Letter of Louis Jurik dated February 1, 1989.
26	Termination Letter of Karol Danowitz dated February 1, 1989.
27	Termination Letter of Carl Gurley dated February 21, 1989.
28	Termination Letter of Gerard Best dated February 21, 1989.
29	Termination Letter of Michael P. Brennan dated February 21, 1989.
30	Termination Letter of Margaret C. Casper dated February 21, 1989.
31	Termination Letter of Elizabeth L. Buchmiller dated February 21, 1989.
32	Termination Letter of Daniel Clemson dated February 21, 1989.
33	Termination Letter of Mary B. Fager dated February 21, 1989.
34	Termination Letter of George A. Franklin dated February 21, 1989.
35	Section 204, "Demotions and Suspensions" and Section 301 "Resignation" of Employee Handbook.
36	Article 29 "Discharge, Demotion, Suspension and Discipline" of the Collective Bargaining Agreement.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES C. MELO, JR.	:	CIVIL ACTION
	:	
<i>Plaintiff,</i>	:	NO. 89-2935
	:	
v.	:	
	:	
BARBARA HAFFER	:	JURY TRIAL
and	:	DEMANDED
JAMES J. WEST, ESQUIRE	:	
<i>Defendants.</i>	:	

AFFIDAVIT OF JOHN M. KERR

I, JOHN M. KERR, subject to the penalties of 18 Pa.C.S. §4904, hereby declare the following to be true and correct to the best of my knowledge, information and belief:

1. From 1977 until early 1983, I served as the appointed Executive Deputy Auditor General, second in command to the elected Auditor General, Alfred Benedict.

2. The Department of the Auditor General is the office of the Commonwealth of Pennsylvania empowered and required under Pennsylvania law to audit, examine and report upon the use of Commonwealth funds; adjust claims against the Commonwealth; settle and collect accounts of Commonwealth officers; act as a member of the Board of Finance and Revenue; and to hire and appoint employees to assist him in the execution of these duties.

The duties of the Auditor General are designed to insure that all money to which the Commonwealth is entitled is deposited in the State Treasury and to make certain that the public money is disbursed legally and properly.

3. On January 25, 1982, following the issuance of a presentment by the Multi-County Investigating Grand Jury, the Attorney General of Pennsylvania filed a Criminal Information charging me with multiple counts of Bribery in Official and Political Matters, 18 Pa.C.S. §4701, Conflict of Interest, 65 P.S. §403(a) and (b), Criminal Attempt, 18 Pa.C.S. §901, Macing, 25 P.S. §§2374 and 2375, Obstructing the Administration of Law or Other Governmental Function, 18 Pa.C.S. §5101, Demanding

Property to Secure Employment, 18 Pa.C.S. §7322, Criminal Solicitation, 18 Pa.C.S. §902, and Criminal Conspiracy, 18 Pa.C.S. §903, in connection with job-selling in the Auditor General's Office.

Following an eleven-day trial, commencing on June 18, 1984, I was found guilty on June 29, 1984 on 139 counts of such charges, and on April 11, 1985, was sentenced to imprisonment on such charges of not less than two nor more than five years.

4. From early 1984, until January, 1989, James C. McAneny ("McAneny") served as Chief Counsel to the Department of the Auditor General.

Prior to serving as Chief Counsel, McAneny engaged in private law practice in Reading, Pennsylvania, in the office of Calvin Lieberman, ("Lieberman") Esquire, who represented me in connection with the then-ongoing grand jury investigation of the "job-selling scheme" in the Auditor General's office.

5. I was aware that McAneny was being considered for the position of Chief Counsel to the Department, and did not object to that appointment.

6. Harold Imber, then Director of Tax and Revenue Audits for the Department, was instrumental in obtaining for McAneny his position with the Auditor General's office.

7. Imber discussed this matter with me, prior to McAneny being hired.

8. Imber was actively involved at that time in soliciting political funds for Al Benedict, and had influence in personnel decisions.

9. The scheme for which I was convicted involved the selling of jobs in the Department of the Auditor General from which Al Benedict and I personally and professionally profited.

10. The job-selling was handled directly by me with the collaboration and cooperation of Al Benedict.

11. In addition, we were further involved in the selling of job promotions and consequent salary increases within the Department of the Auditor General.

12. Al Benedict and I personally and professionally profited from the sale of job promotions as well.

13. The selling of job promotions was handled directly by me with the collaboration, cooperation and knowledge of Al Benedict.

14. The procedure by which the job and promotion selling scheme operated was that I would take the job application to the Department of the Auditor General Personnel Office, and advise Russell Biggica, the Personnel Director at that time, or Eric Slater, the Assistant Personnel Director at that time that a particular applicant should be interviewed.

15. Neither Russell Biggica or Eric Slater were aware that a particular applicant had paid money to me and Al Benedict for his/her job, but they did understand that the applicant should be hired by the Department of the Auditor General.

16. The applicant was subsequently interviewed, usually by Eric Slater, and approximately four months after the receipt of the application and cash by me, the applicant was hired to a position in the Department of the Auditor General.

17. An individual who obtained a promotion with the Department of the Auditor General as a result of this job-selling scheme was James C. Melo, Jr.

18. Melo obtained a promotion from Field Auditor I to Field Auditor III in 1978 by virtue of \$2,700 in cash paid to me by Melo's relative, "Reds" Barbone.

19. As noted above, prior to his employment as Chief Counsel to the Department of the Auditor General, McAneny, while engaged in the private practice of law, had been associated with Calvin Lieberman ("Lieberman"), Esquire, whose law practice was located in Reading, Pennsylvania. Lieberman subsequently was elected a judge of the Court of Common Pleas of Berks County, Pennsylvania, and served on the bench until he resigned in 1988.

20. While McAneny was associated with Lieberman in the private practice of law, Lieberman acted as my legal counsel in connection with the then-ongoing grand jury investigation into job-selling activities within the Department of the Auditor General. As my counsel, Lieberman rendered legal advice to me regarding my activities in receiving payments of money in return for hiring and promoting individuals in the Department of the Auditor General. As an associate in Lieberman's office,

McAneny performed various tasks in connection with this representation and had access to confidential files and communications concerning the investigation.

21. This affidavit has been given of my own free will, and is not the result of any promise of favorable treatment by anyone, including the United States Attorney.


JOHN M. KERR

Dated: June 14, 1989

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES C. MELO, JR., et al. : CIVIL ACTION
Plaintiffs, :
v. : NO. 89-2935

BARBARA HAFFER

and

JAMES J. WEST, ESQUIRE
Defendants.

CARL GURLEY, et al. : CIVIL ACTION
Plaintiffs, :
v. : NO. 89-2685

BARBARA HAFFER
Defendant.

DECLARATION OF DEFENDANT BARBARA HAFER

I, Barbara Hafer hereby declare under the penalties of perjury pursuant to 28 U.S.C. §1746 that the following is true to the best of my information, knowledge and belief:

1. I am one of the named defendants in *James C. Melo, Jr. et al. v. Barbara Hafer and James J. West*, C.A. No. 89-2935, currently pending in the United States District Court for the Eastern District of Pennsylvania and I am the only named defendant in *Carl Gurley. et al. v. Barbara Hafer*, Civil Action No.89-2685, also pending in the United States District Court for the Eastern District of Pennsylvania. I am submitting this Declaration in Support of the Defendant's Motion for Summary Judgment and the statements contained in this Declaration are all made on the basis of my own personal knowledge.

2. I was elected Auditor General of the Commonwealth of Pennsylvania in 1988 following my nomination during 1988 as a candidate for that position by the Republican Party. I was inaugurated as Auditor General on January 17, 1989 and have served as Auditor General of Pennsylvania since that date.

3. During the campaign for the post of Auditor General in 1988, it came to my attention from newspaper articles attached to this motion as Exhibit "2" that the current Auditor General against whom I was running in that election, Donald Bailey, had received information from James J. West, acting United States Attorney for the Middle District of Pennsylvania, that numerous employees of the Auditor General's office had been hired or received promotions as a result of payments made to senior officials in the Auditor General's office including former Auditor General Al Benedict and former First Deputy Auditor General John Kerr.

4. On October 6th, 1988 I sent a written request to West requesting that he provide to me the list of individuals who purportedly had purchased jobs or promotions with the Department during Benedict's tenure and who were still employed in the Department. A true and correct copy of this letter is attached to this motion as Exhibit "4".

5. Though Mr. West had previously provided this list to Auditor General Bailey, he declined to provide it to me on the grounds that I was merely a candidate for Auditor General while Mr. Bailey was the actual holder of the office.

6. On October 19, 1988, Mr. West responded to my request for the individual names via correspondence stating:

I have also thoroughly considered your request to have the names of the twenty-one individuals that I identified in January of 1988 for Auditor General Bailey as job purchasers made available to you, and regret that I concluded that isn't possible at the present time. This information was gathered during an official investigation by the Federal Bureau of Investigation and basically from the debriefings of former Auditor General Al Benedict and John Kerr. The information was turned over to Auditor General Bailey in January because he is the only person in an official position

able to institute and direct appropriate administrative action against these people. Compliance with your request, on the other hand, could result in a general disclosure of these names and their use in a pending political campaign. This would not be an appropriate use of official materials gathered by the Federal Bureau of Investigation and forms the basis of why we must treat your request for disclosure differently than Mr. Bailey's.

A true and correct copy of West's letter is attached to this motion as Exhibit "5".

7. The only other contact I had with Mr. West prior to the election was: (1) a telephone conversation with Mr. West during which he informed me of his forthcoming October 19, 1988 letter and told me that he had declined to provide me with a copy of the list for the reasons cited in his letter; and (2) a letter sent by me on October 28th to Mr. West, a true and correct copy of which is attached to this motion as Exhibit "8"

8. Based upon information I received during the campaign, I compiled a list of persons, who were suspected job-buyers as well as persons who had allegedly been maced by Mr. Bailey in that he had required them to make political contributions to his campaigns in return for continued employment with the department. I provided this list to Mr. West as an attachment to my letter of October 6, 1988.

9. Additional names were supplied by me to West with my letter of October 28, 1989.

10. Also, on October 4, 1988, my campaign manager, Charles Lewis sent a letter to West stating that our campaign was aware of certain individuals who had been maced by Auditor General Bailey. A true and correct copy of this letter is attached to this motion as Exhibit "9"

11. During the campaign, I had on several occasions made reference to the job-buying scheme. In particular, I referred to the scheme and the communications between Don Bailey and James West concerning the presence of job-buyers in the Department during a debate televised by WQED (Pittsburgh), a partial transcript of which is attached to this affidavit as Exhibit "6".

12. During this debate, I stated:

There are a list of twenty (20) names of people that bought their jobs given to you [Bailey] by Jim West, the U.S. Attorney of the Middle District. He sent me a letter responding to the information I gathered about people that bought their jobs. . . .

* * *

I also stated:

We had twenty people named by the U.S. Attorney as having bought their jobs. Bailey's done nothing about it. That list was given to him by his request.

* * *

Furthermore, I said:

Those twenty names were given to you by Jim West at your request. I have the letter — the transmittal letter. I talked to Mr. West last week, he said "not only did he give you the information, he gave you specific instructions to proceed with the investigation and punish those people as you saw fit".

13. My original knowledge that a list of suspected job-buyers had been provided to Bailey by U.S Attorney West came from newspaper reports, such as those attached hereto as Exhibit "2". These reports incorrectly stated that the list provided to Bailey contained twenty (20) names, rather than the twenty-one (21) names actually provided to Bailey. Because my information came from newspaper reports, I incorrectly referred to the "list of twenty names". The transmittal letter which is referred to above is the letter of James West to me dated October 19, 1988, a true and correct copy of which is attached to this motion as Exhibit "5". This transmittal letter plainly states that Mr. West provided to Mr. Bailey the list of suspected job-buyers on January 21, 1988 though Mr. West declined to provide that list to me because at the time of my request I was only a candidate for Auditor General.

14. On November 15, 1988, following my election as Auditor General, I again wrote to Mr. West regarding this matter. At that time, I renewed my request for the list of persons which had previously been transmitted to Auditor General Bailey. A true and correct copy of this letter is attached to this motion as Exhibit "10". But Mr. West declined to provide

me with that list even though I had recently won election as Auditor General and was to assume that office in January of 1989. Mr. West requested that I obtain the information directly from the files of the Auditor General's office though he did agree to meet with me following my inauguration. A true and correct copy of this letter, dated November 23, 1988, is attached to this motion as Exhibit "11".

15. Following my inauguration, I did meet with Mr. West on January 18, 1989 to discuss the results of the United States Attorney's investigation into corruption at the Auditor General's office. By that time, I had already obtained Mr. West's correspondence to Bailey from files left in the Auditor General's office.

16. These files showed that on January 21, 1988, West had written to Bailey and identified certain individuals who were employed by the Department who had paid or been the beneficiaries of the payments of substantial sums to obtain jobs or promotions with the Department. A true and correct copy of this letter is attached to this motion as Exhibit "12".

17. By a letter dated June 21, 1988, Mr. West advised Auditor General Bailey that "there is no longer any reason for him to refrain from taking appropriate action" against such individuals that remain employed by the Department. A true and correct copy of this letter is attached to this motion as Exhibit "13". Attached to this letter were summaries prepared by the Federal Bureau of Investigation detailing the job-buying scheme as it pertained to persons still employed by the Office of Auditor General. True and correct copies of these FBI summaries are attached to this motion as Exhibit "14".

18. The Department's files showed that following receipt of this letter, Auditor General Bailey authorized his chief counsel, James J. McAneny, to conduct an internal investigation of the job selling scheme. These files demonstrated that Mr. McAneny's investigation consisted merely of cursory interviews of the individuals identified as job buyers. Mr. McAneny apparently never interviewed a single intermediary or John Kerr in connection with his investigation. But the transcript of Mr. McAneny's interviews with the employees do reflect that he informed each employee of the allegations against them and

gave them an opportunity to respond to those allegations. A true and correct copy of the transcripts of the interviews conducted pursuant to this investigation are attached to this motion as Exhibit "16".

19. Following my inauguration, I also authorized an independent investigation of the job-buying scheme which included in part thereof a review of: (1) the records of the criminal prosecutions of Kerr and Benedict; (2) the FBI records relating to the job-selling scheme; (3) the records of the Bailey administration "investigation"; (4) an interview with Kerr; (5) a review of information provided by the Pennsylvania Attorney General; (6) interviews of West and agents of the Federal Bureau of Investigation; and (7) all other relevant departmental records.

20. On February 1, 1989, after reviewing the information discussed above and the results of Bailey and McAneny's investigation, I terminated the employment of eighteen individuals who either made, or were beneficiaries of substantial sums paid to obtain jobs or promotions with the Department.

21. I announced these terminations via a press release stating:

"Today I am dismissing 18 employees of the Auditor General's Office who, evidence shows, benefited from the job-and-promotion-selling scandal that has preoccupied this office for nearly a decade. The actions I am announcing today will go a long way towards concluding one of the most complicated investigations involving the misuse of the public's trust in our state's history."

Speaking at a news conference here, Hafer said the terminations were based on information provided by the U.S. Attorney's Office, the state attorney general's office and new material developed by her staff while pursuing existing evidence. Hafer said that some members of her staff have spent the bulk of the past two weeks sifting through the information.

"That information," Hafer said, "substantiates charges that the individuals either bought their jobs or promotions directly or through third parties."

Termination notices are being delivered to the individuals, directing them to vacate their positions and offices by 5:00 P.M. today, according to Hafer.

Today's action, according to Hafer, was the only way to lift the cloud of suspicion that has hung over those hard-working and dedicated employees of the Auditor General's Office.

Hafer said the buying of jobs and promotions subverts the laws and procedures that are in place to ensure that everyone has fair and equal access to state employment.

"Faced with evidence of such blatant disregard of law, public policy and the concept of fundamental fairness, I have ordered the removal of these individuals," Hafer said. "It is simply the right thing to do . . . it is consistent with my obligation to serve the public's interest."

Among the documents Hafer's staff examined was a list given to Don Bailey last January by Acting U.S. Attorney James West. The list contained the names of 21 individuals who benefited from the job-and-promotion-selling ring. Further investigation resulted in four new names being added to that list.

Of the total of 25: one is in prison (Harold Imber); two, who previously were fired because of their involvement in the job-selling scheme, have been reinstated to their positions through arbitration; and four have resigned or retired. The 18 remaining employees are being terminated as of close of business February 1.

"My predecessor chose to take no action," Hafer said. "So the responsibility for dealing with the situation has fallen to my administration."

"Today I have taken action which I believe will begin to restore the stature of this department. It is a vital first step in re-establishing the public's trust in the Office of Auditor General."

A true and correct copy of this press release is attached to this motion as Exhibit "18".

22. Several of the plaintiffs in these cases were terminated because they were implicated in the job-buying scheme, including:

James Melo;
John Weikel;
Lucille Russell;
Waiter Speelman;
Don Ruggerio;
James DiCosimo;
Louise Jurek; and
Karol Danowitz

23. James Melo began employment in the department of the Auditor General on October 11, 1977, as a Field Auditor I, at an annual salary of \$10,367.00. In late 1978, \$2,700.00 was paid to Kerr by "Reds" Barbone, a beer distributor and relative of Melo's for a promotion for Melo. As a result of this payment, Melo was subsequently promoted from a Field Auditor I to a Field Auditor III, thereby receiving a significant boost in salary.

I terminated Melo's employment on February 1, 1989 via correspondence sent to Melo's home address in Bensalem, Pennsylvania stating:

Effective the close of business at 5:00 p.m. on Wednesday, February 1, 1989 your employment as a Field Auditor IV, Bureau of County Audits, in the Auditor General's Office will be terminated.

This action is necessary based on information gathered by my office as well as through cooperation with other governmental agencies as the result of an investigation into your involvement in a job-buying and/or job promotion scheme in the Auditor General's Office.

Please return all Commonwealth Property to the Auditor General's Personnel Office and complete all separation documents.

The letter was signed by me and placed in Melo's personnel file. It has not been shown to anyone nor will it be distributed to anyone in the future.

I was unaware of Melo's political affiliation until he filed this action and claimed to be a registered Democrat.

The information in this paragraph is based upon the investigation and review described in paragraph 19 above and the FBI summaries attached as Exhibit "14".

24. In late summer 1983, Rachel Marte ("Marte"), Weikel's mother-in-law, paid Dennis Sabo ("Sabo"), a Dauphin County Benedict Coordinator, \$1,500 cash of which \$1,000 cash was paid to Kerr by Sabo. As a result of this payment, John Weikel began employment in the Department of the Auditor General on October 17, 1983 as a Clerk I at an annual salary of \$10,347.00.

I terminated Weikel's employment on February 1, 1989 via correspondence sent to Weikel's home address in Bensalem, Pennsylvania stating:

Effective the close of business at 5:00 p.m. on Wednesday, February 1, 1989 your employment as a Stock Clerk II, Bureau of Supplies and Maintenance, in the Auditor General's Office will be terminated.

This action is necessary based on information gathered by my office as well as through cooperation with other governmental agencies as the result of an investigation into your involvement in a job-buying and/or job promotion scheme in the Auditor General's Office.

Please return all Commonwealth Property to the Auditor General's Personnel Office and complete all separation documents.

The letter was signed by me and placed in Weikel's personnel file. It has not been shown to anyone nor will it be distributed to anyone in the future.

I was unaware of Weikel's political affiliation until he filed this action and claimed to be a registered Democrat.

The information in this paragraph is based upon the investigation and review described in paragraph 19 above and the FBI summaries attached as Exhibit "14".

25. In late 1979, Robert Russell, Lucille Russell's husband, made a \$1,000 cash payment to Al Benedict's campaign fund. As

a result of this payment, Lucille Russell began employment in the Department of the Auditor General on January 14, 1980 as a Field Auditor I at an annual salary of \$14,611.00. I terminated Russell's employment on February 1, 1989 via correspondence sent to Russell's home address in Bensalem, Pennsylvania stating:

Effective the close of business at 5:00 p.m. on Wednesday, February 1, 1989 your employment as a Field Auditor III, Bureau of School Audits in the Auditor General's office will be terminated.

This action is necessary based on information gathered by my office as well as through cooperation with other governmental agencies as the result of an investigation into your involvement in a job-buying and/or job promotion scheme in the Auditor General's Office.

Please return all Commonwealth Property to the Auditor General's Personnel Office and complete all separation documents.

The letter was signed by me and placed in Russell's personnel file. It has not been shown to anyone nor will it be distributed to anyone in the future.

I was unaware of Russell's political affiliation until she filed this action and claimed to be a registered Democrat.

The information in this paragraph is based upon investigation and review described in paragraph 19 above and the FBI summaries attached as Exhibit "14".

26. In late summer 1980, Rachel Marte ("Marte"), Walter Speelman's mother-in-law, paid Dennis Sabo ("Sabo"), a Dauphin County Benedict Coordinator, \$1,500 cash, of which \$1,000 cash was paid to Kerr by Sabo. As a result of this payment, Walter Speelman began employment in the Department of Auditor General on September 22, 1980 as a Liquor Store Examiner I at an annual salary of \$12,968.

I terminated Speelman's employment on February 1, 1989 via correspondence sent to Speelman's home address in Bensalem, Pennsylvania stating:

Effective the close of business at 5:00 p.m. on Wednesday, February 1, 1989 your employment as a Liquor Store Examiner II, Bureau of Liquor Audits in the Auditor General's Office will be terminated.

This action is necessary based on information gathered by my office as well as through cooperation with other governmental agencies as the result of an investigation into your involvement in a job-buying and/or job promotion scheme in the Auditor General's Office.

Please return all Commonwealth Property to the Auditor General's Personnel Office and complete all separation documents.

The letter was signed by me and placed in Speelman's personnel file. It has not been shown to anyone nor will it be distributed to anyone in the future.

I was unaware of Speelman's political affiliation until he filed this action and claimed to be a registered Democrat.

The information in this paragraph is based upon the investigation and review described in paragraph 19 above and the FBI summaries attached as Exhibit "14".

27. In January 1977, \$1,000 was paid to Kerr by Richard Walton ("Walton"), the Columbia County Democratic Chairman, for a job for Don Ruggerio. As a result of this payment, Ruggerio began employment in the Department of the Auditor General on February 14, 1977 as a Field Auditor I at an annual salary of \$10,367.

I terminated Ruggerio's employment on February 1, 1989 via correspondence sent to Ruggerio's home address in Bensalem, Pennsylvania stating:

This letter is to advise you that your position as a Field Auditor II, Bureau of County Audits in the Auditor General's Office is hereby terminated, effective Wednesday, February 1, 1989, 5:00 p.m., subject to any rights you may have as a result of any Workman's Compensation determination.

Please arrange to return all Commonwealth Property to the Auditor General's Personnel Office and complete all separation documents at your earliest convenience.

The letter was signed by me and placed in Ruggerio's personnel file. It has not been shown to anyone nor will it be distributed to anyone in the future.

I was unaware of Ruggerio's political affiliation until he filed this action and claimed to be a registered Democrat.

The information in this paragraph is based upon the investigation and review described in paragraph 19 above and the FBI summaries attached as Exhibit "14".

28. In late 1980, DiCosimo made a cash payment of approximately \$1,000 to Kerr. As a result of this payment, James DiCosimo began employment in the Department of the Auditor General on January 14, 1980 as a Field Auditor at an annual salary of \$15,863.00.

I terminated DiCosimo's employment on February 1, 1989 via correspondence sent to DiCosimo's home address in Bensalem, Pennsylvania stating:

Effective the close of business at 5:00 p.m. on Wednesday, February 1, 1989 your employment as a Field Auditor III, Bureau of County Audits in the Auditor General's Office will be terminated.

This action is necessary based on information gathered by my office as well as through cooperation with other governmental agencies as the result of an investigation into your involvement in a job-buying and/or job promotion scheme in the Auditor General's Office.

Please return all Commonwealth Property to the Auditor General's Personnel Office and complete all separation documents.

The letter was signed by me and placed in DiCosimo's personnel file. It has not been shown to anyone nor will it be distributed to anyone in the future.

I was unaware of DiCosimo's political affiliation until he filed this action and claimed to be a registered Democrat.

The information in this paragraph is based upon the investigation and review described in paragraph 19 above and the FBI summaries attached as Exhibit "14".

29. Louise Jurik began employment in the Department of the Auditor General on August 7, 1972 as a Field Auditor Trainee at an annual salary of \$7,055.00. Prior to February, 1983, a cash payment was made to Kerr by John Lignelli, for a promotion for Jurik, who was at that time employed as a Field Auditor II. As a result of this bribe, on February 22, 1983, Jurik was subsequently promoted from a Field Auditor II to a Field Auditor III.

I terminated Jurik's employment on February 1, 1989 via correspondence sent to Jurik's home address in Bensalem, Pennsylvania stating:

Effective the close of business at 5:00 p.m. on Wednesday, February 1, 1989 your employment as a Field Auditor III, Bureau of School Audits in the Auditor General's office will be terminated.

This action is necessary based on information gathered by my office as well as through cooperation with other governmental agencies as the result of an investigation into your involvement in a job-buying and/or job promotion scheme in the Auditor General's Office.

Please return all Commonwealth Property to the Auditor General's Personnel Office and complete all separation documents.

The letter was signed by me and placed in Jurik's personnel file. It has not been shown to anyone nor will it be distributed to anyone in the future.

I was unaware of Jurik's political affiliation until she filed this action and claimed to be a registered Democrat.

The information in this paragraph is based upon the investigation and review described in paragraph 19 above and the FBI summaries attached as Exhibit "14".

30. In late 1980, Karol Danowitz' husband, Harvey Danowitz, made a \$3,000 cash payment through an intermediary that was received by Kerr. As a result of this payment, Karol

Danowitz began employment in the Department of the Auditor General on December 1, 1980 as a Clerk I at an annual salary of \$9,526.

I terminated Danowitz' employment on February 1, 1989 via correspondence sent to Danowitz' home address in Bensalem, Pennsylvania stating:

Effective the close of business at 5:00 p.m. on Wednesday, February 1, 1989 your employment as a Clerk I, Bureau of Files and Records, in the Auditor General's Office will be terminated.

This action is necessary based on information gathered by my office as well as through cooperation with other governmental agencies as the result of an investigation into your involvement in a job-buying and/or job promotion scheme in the Auditor General's Office.

Please return all Commonwealth Property to the Auditor General's Personnel Office and complete all separation documents.

The letter was signed by me and placed in Danowitz' personnel file. It has not been shown to anyone nor will it be distributed to anyone in the future.

I was unaware of Danowitz' political affiliation until she filed this action and claimed to be a registered Democrat.

The information in this paragraph is based upon the investigation and review described in paragraph 19 above.

31. I also terminated numerous other individuals as part of a managerial overhaul of the Department on February 21, 1989.

32. After reviewing the performance of the department under my predecessor Bailey, I determined that I needed Bureau Chiefs who would assume more responsibility than they were required to in the past and who would carry out my policies and manage the department in a professional and efficient manner. Therefore, I decided to terminate all fourteen (14) persons who were Bureau Chiefs during the Bailey administration. All but two (2) of these persons were replaced from

within the department. All of the second group of employee-plaintiffs are persons who were dismissed as part of this reorganization and all but Carl Gurley and Daniel Clemson were bureau chiefs.

33. Carl Gurley was employed by the Office of Auditor General as an investigator until I terminated him on February 21, 1989 as a result of a managerial overhaul of the Department. Mr. Gurley was terminated via correspondence sent to his home address in Philadelphia, Pennsylvania which stated:

Please be advised that effective Tuesday February 21, 1989 at 5:00 p.m. your services will no longer be required by the Department of Auditor General. I would like to thank you for your service to this agency and wish you the best of success in your future endeavors.

Please return all Commonwealth Property to the Office of Personnel and make arrangements with that office to accommodate the processing of your paperwork.

The letter was signed by me and placed in Gurley's personnel file. It has not been shown to anyone nor will it be distributed to anyone in the future.

I was unaware of Gurley's political affiliation until he filed this action and claimed to be a registered Democrat.

34. W. Gerard Best was employed by the Office of Auditor General as a Bureau Director until I terminated him on February 21, 1989 as a result of a managerial overhaul of the Department. Mr. Best was terminated via correspondence sent to his home address in Philadelphia, Pennsylvania which stated:

Please be advised that effective Tuesday, February 21, 1989 at 5:00 p.m. your services will no longer be required by the Department of Auditor General. I would like to thank you for your services to this agency and wish you the best of success in your future endeavors.

Please return all Commonwealth Property to the Office of Personnel and make arrangements with that office to accommodate the processing of your paperwork.

The letter was signed by me and placed in Best's personnel file. It has not been shown to anyone nor will it be distributed to anyone in the future.

I was unaware of Best's political affiliation until he filed this action and claimed to be a registered Democrat.

35. Michael Brennan was employed by the Office of Auditor General as Director of the Bureau of Audits until I terminated him on February 21, 1989 as a result of a managerial overhaul of the Department. Mr. Brennan was terminated via correspondence sent to his home address in Pottsville, Pennsylvania which stated:

Please be advised that effective Tuesday, February 21, 1989 at 5:00 p.m. your services will no longer be required by the Department of Auditor General. I would like to thank you for your service to this agency and wish you the best of success in your future endeavors.

Please return all Commonwealth Property to the Office of Personnel and make arrangements with that office to accommodate the processing of your paperwork.

The letter was signed by me and placed in Brennan's personnel file. It has not been shown to anyone nor will it be distributed to anyone in the future.

I was unaware of Brennan's political affiliation until he filed this action and claimed to be a registered Democrat.

36. Margaret Casper was employed by the Office of Auditor General as Director of the Bureau of Support Services until I terminated her on February 21, 1989 as a result of a managerial overhaul of the Department. Ms. Casper was terminated via correspondence sent to her home address in Palmyra, Pennsylvania which stated:

Please be advised that effective Tuesday, February 21, 1989 at 5:00 p.m. your services will no longer be required by the Department of Auditor General. I would like to thank you for your service to this agency and wish you the best of success in your future endeavors.

Please return all Commonwealth Property to the Office of Personnel and make arrangements with that office to accommodate the processing of your paperwork.

The letter was signed by me and placed in Casper's personnel file. It has not been shown to anyone nor will it be distributed to anyone in the future.

I was unaware of Casper's political affiliation until she filed this action and claimed to be a registered Democrat.

37. Elizabeth Buchmiller was employed by the Office of Auditor General as Director of State-Owned Institution Audits until I terminated her on February 21, 1989 as a result of a managerial overhaul of the Department. Ms. Buchmiller was terminated via correspondence sent to her home address in Whitehall, Pennsylvania which stated:

Please be advised that effective Tuesday February 21, 1989 at 5:00 p.m. your services will no longer be required by the Department of Auditor General. I would like to thank you for your service to this agency and wish you the best of success in your future endeavors.

Please return all Commonwealth Property to the Office of Personnel and make arrangements with that office to accommodate the processing of your paperwork.

The letter was signed by me and placed in Buchmiller's personnel file. It has not been shown to anyone nor will it be distributed to anyone in the future.

I was unaware of Buchmiller's political affiliation until she filed this action and claimed to be a registered Democrat.

38. Daniel Clemson was employed by the Office of Auditor General as an Assistant Director of the Bureau of School Audits until I terminated him on February 21, 1989 as a result of a managerial overhaul of the Department. Mr. Clemson was terminated via correspondence sent to his home address in Mechanicsburg, Pennsylvania which stated:

Please be advised that effective Tuesday February 21, 1989 at 5:00 p.m. your services will no longer be required by the Department of Auditor General. I would like to thank you

for your service to this agency and wish you the best of success in your future endeavors.

Please return all Commonwealth Property to the Office of Personnel and make arrangements with that office to accommodate the processing of your paperwork.

The letter was signed by me and placed in Clemson's personnel file. It has not been shown to anyone nor will it be distributed to anyone in the future.

I was unaware of Clemson's political affiliation until he filed this action and claimed to be a registered Democrat.

39. Mary Fager was employed by the Office of Auditor General as Director of the Bureau of Federal Audits until I terminated her on February 21, 1989 as a result of a managerial overhaul of the Department. Ms. Fager was terminated via correspondence sent to her home address in Harrisburg, Pennsylvania which stated:

Please be advised that effective Tuesday, February 21, 1989 at 5:00 p.m. your services will no longer be required by the Department of Auditor General. I would like to thank you for your service to this agency and wish you the best of success in your future endeavors.

Please return all Commonwealth Property to the Office of Personnel and make arrangements with that office to accommodate the processing of your paperwork.

The letter was signed by me and placed in Fager's personnel file. It has not been shown to anyone nor will it be distributed to anyone in the future.

I was unaware of Fager's political affiliation until she filed this action and claimed to be a registered Democrat.

40. George Franklin was employed by the Office of Auditor General as Director of the Bureau of Municipal Pension Audits until I terminated him on February 21, 1989 as a result of a managerial overhaul of the Department. Mr. Franklin was terminated via correspondence sent to his home address in Harrisburg, Pennsylvania which stated:

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Please be advised that effective Tuesday, February 21, 1989 at 5:00 p.m. your services will no longer be required by the Department of Auditor General. I would like to thank you for your service to this agency and wish you the best of success in your future endeavors.

Please return all Commonwealth Property to the Office of Personnel and make arrangements with that office to accommodate the processing of your paperwork.

The letter was signed by me and placed in Franklin's personnel file. It has not been shown to anyone nor will it be distributed to anyone in the future.

I was unaware of Franklin's political affiliation until he filed this action and claimed to be a registered Democrat.

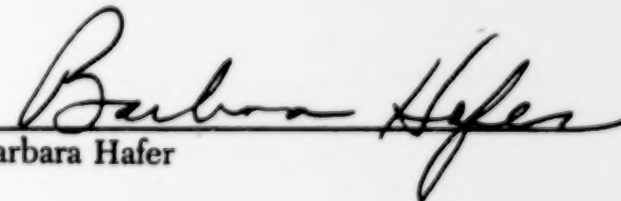
41. At no time have I been aware of the political affiliations of any of the plaintiffs nor did political affiliation play any part in my decision to discharge them from their positions with the Office of Auditor General.

42. And I have been informed that the plaintiffs' personnel records do not contain any information concerning political affiliation.

43. Each of the suspected job-buyers learned of the allegations against them and had an opportunity to respond to those allegations prior to their discharges as they were apprised of the charges during the Bailey administration's investigation.

44. As the elected Auditor General of the Commonwealth of Pennsylvania, it is my responsibility to make all final personnel and policy decisions for the Department. My decision to terminate the job-buyers and the other ex-employee-plaintiffs was a policy decision made by myself alone.

45. At all times relevant to this matter, in making and carrying out the aforementioned policy decisions, I was acting within the scope of my employment as Auditor General of Pennsylvania.


Barbara Hafer

Dated 8/7/89

JA-83

U.S. Department of Justice
United States Attorney
Middle District of Pennsylvania

Federal Building, 228 Walnut Street
Post Office Box 11754
Harrisburg, Pennsylvania 17108

717/782-4482
FTS/590-4482

October 19, 1988

Barbara Hafer
P.O. Box 2742
Pittsburgh, PA 15230

Dear Ms. Hafer:

This will acknowledge receipt of letters earlier this month from your Campaign Manager and yourself relating to the job sale scheme at the Pennsylvania State Auditor General's Office.

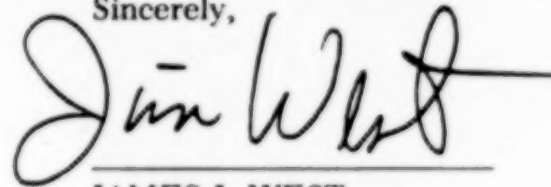
I have reviewed the materials provided by your Campaign Manager with great interest and have forwarded them to the Harrisburg resident agency of the Federal Bureau of Investigation for whatever follow up inquiry they deem as appropriate.

I have also thoroughly considered your request to have the names of the 21 individuals that I identified in January of 1988 for Auditor General Bailey as job purchasers made available to you, and regret I have concluded that is impossible at the present time. This information was gathered during an official investigation by the Federal Bureau of Investigation and comes basically from the debriefings of former Auditor General Al Benedict and John Kerr. The information was turned over to Auditor General Bailey in January because he is the only person in an official position to institute and direct appropriate administrative action against these people. Compliance with your request, on the other hand, could result in the general disclosure of these names and their use in the pending political campaign. This would not be an appropriate use of official materials gathered by the Federal Bureau of Investigation and forms the basis of why we must treat your request for disclosure differently than Mr. Bailey's.

JA-84

In the event that you are successful in your quest for the Auditor General's Office, I will be pleased to cooperate with you in this matter as well as in all other matters of mutual interest.

Sincerely,



JAMES J. WEST
United States Attorney

cc: Mr. Charles Lewis
P.O. Box 2742
Pittsburgh, PA

David Malarney
Federal Bureau of Investigation

JA-85

U.S. Department of Justice

United States Attorney
Middle District of Pennsylvania

Federal Building, 228 Walnut Street
Post Office Box 11754
Harrisburg, Pennsylvania 17108

717/782-4482
FTS/590-4482

November 23, 1988

Honorable Barbara Hafer
Auditor General Elect
P.O. Box 2742
Pittsburgh, PA 14230

Dear Ms. Hafer:

Congratulations on your election as Auditor General of Pennsylvania. I am personally looking forward to working with you in all matters of mutual concern and assisting you, within the limits of my legal authority, in the numerous important tasks which are ahead of you. I also know that I speak for the federal investigative agencies and their career professional personnel in this regard.

In response to your recent letter, I am enclosing herein several miscellaneous documents, from the public record, which cover some of the high-points of the investigation into corruption in the Auditor General's office. I will be pleased to meet with you at any mutually convenient time and location to discuss these matters of public record and am grateful that you have shown an interest in these matters.

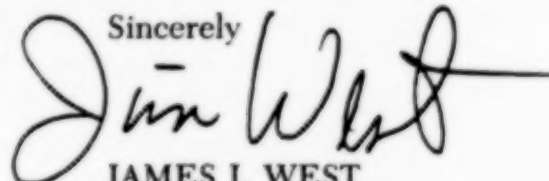
At this proposed meeting, I would like to discuss with you your request for information concerning job purchasers who are still employees of the Auditor General's office. As you are aware, there are many allegations and cross-allegations arising out of the Imber investigation, some of which are presently under investigation by the Department of Justice Office of Professional Responsibility. Moreover, at the request of your predecessor, I requested the FBI to prepare and provide letter memoranda to the Auditor General of Pennsylvania fully summarizing relevant information concerning present employees involved in the job sale scheme. Rather than going through a completely new

JA-86

disclosure process, it is preferable, from my perspective, that the information already provided be turned over to you by the Auditor General's office. I do not wish to elevate form over substance, but I do believe that we should fully discuss the best method for you to obtain this information.

If you could have someone from your staff contact Carol Simpson at my Harrisburg office (717-782-4482), she is fully knowledgeable about my schedule and could arrange a mutually convenient time for us to meet and discuss these matters. It would be my intention to have the case agent, George Delaney, from the Harrisburg resident agency of the FBI present at this particular meeting and, likewise, you may wish to bring someone from your staff.

Again, congratulations on your great victory, and I look forward to our meeting in the near future.

Sincerely

JAMES J. WEST
United States Attorney

JA-87

U.S. Department of Justice
United States Attorney
Middle District of Pennsylvania

Federal Building, 228 Walnut Street
Post Office Box 11754
Harrisburg, Pennsylvania 17108

717/782-4482
FTS/590-4482

PERSONAL AND CONFIDENTIAL

January 21, 1988

Don Bailey
Auditor General of Pennsylvania
Office of the Auditor General
229 Finance Building
Harrisburg, PA 17120

Dear Mr. Bailey:

I am in receipt of the letter of January 15, 1988, from your Chief Counsel, Mr. McAneny, requesting "help and advice" concerning the sale of jobs within the administration of your predecessor, Alfred P. Benedict. I have consulted with the Attorney General of Pennsylvania, the relevant agents of the Harrisburg Resident Agency of the Federal Bureau of Investigations, the Internal Revenue Service, and the Pennsylvania Bureau of Criminal Investigations and have their concurrence in making a limited disclosure to you of non-grand jury information. This information will consist of a list of names of present Auditor General Office employees on whose behalf either Al Benedict or John Kerr have stated they received a payment in exchange for employment at the Pennsylvania Auditor General office.

This list is as follows:

- | | |
|-----------------------------------|------------------------------|
| 1. Don Ruggerio | 11. J. Michael Larkin |
| 2. James C. Melo, Jr. (Promotion) | 12. Francis Favasuli |
| 3. James M. Walsh | 13. Walter Speelman |
| 4. Thomas Anderson | 14. John E. Weikel |
| 5. Gary Beswick | 15. Patrick Coyne |
| 6. Mitchell Carr | 16. Frank Zatta (Promotion) |
| 7. Beverly Esterman | 17. Louise Jurik (Promotion) |
| 8. Markos J. Xenakis | 18. James Discosimo |
| 9. David Pantano | 19. Karol Danowitz |
| 10. Rodney Weist | 20. Harold Imber |
| | 21. Lucille Russell |

I would caution you that at least seven of these individuals have previously been named by the January 25, 1982 state-wide investigating grand jury in Presentment No. 27, which was made public on November 17, 1983. I presume that efforts to take administrative action against these particular individuals has been unsuccessful to date.

I would also point out that our evidence indicates that with the exception of Harold Imber and James Dicosimo, the actual payments delivered to Benedict and/or Kerr were made by friends, relatives (husbands, fathers, cousins), and other third parties (Michael Hanna, [deceased], Nick Saittis, etc.), rather than being made directly by the named individuals. In addition, information has been developed which identifies at least three present employees who have delivered money in order to secure jobs for others. These names cannot be made available at this time but may be made available in the near future.

You should also be aware that when names were previously released in presentments handed down by the Pennsylvania state-wide investigative grand jury, this was normally based on admissions by the named individual. This would not be the case concerning the names disclosed in this letter because they were developed through covert investigative activities by the Federal Bureau of Investigation. Accordingly, you should not presume that the named individuals have confessed any involvement to law enforcement officials. Likewise, we can express no opinion on whether these listed individuals knew of the purchase of their jobs other than the fact that our investigation affirmatively indicates that Karol Danowitz did not know of her job purchase.

I would not attempt to give you any type of legal advice concerning how to proceed with this particular information. I believe that the pitfalls you face at the administrative level have proven substantial in past cases. I would request that you keep these names strictly confidential, not use them for any type of media disclosures other than necessary to appropriate administrative proceedings, and make them available only to your most trusted employees on a need-to-know basis.

Finally, I would point out that disclosures such as are made in this letter are highly unusual when they relate to an ongoing criminal investigation, especially one involving a pattern of

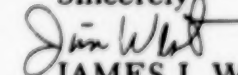
racketeering activity. In arriving at the decision to disclose this information, I have scrutinized it closely and am satisfied that it is not directly derived from grand jury material. Moreover, all parties involved have recognized the awkward position you would be placed in if the information was not made available. We have done everything possible to minimize any embarrassment to you or your office during the course of the investigation and prosecution. Hopefully, we will be able to continue in a cooperative fashion. Of course, this office can only cooperate to a certain extent and I cannot jeopardize an ongoing racketeering investigation so as to aid you in pursuing civil or administrative remedies available to you.

I have taken the liberty of enclosing a copy of the criminal RICO/tax information to which Alfred P. Benedict has entered a plea of guilty and a press release putting this material in context. I hope that last week's disclosures concerning this fourteen month covert operation explains my reaction to your remarks at your last meeting concerning the FBI's handling of corruption matters in the Middle District of Pennsylvania. My opinion remains the same, that some of the best work done anywhere in the country in the field of public corruption is being done out of the Harrisburg Resident Agencies of the Federal Bureau of Investigation and Internal Revenue Service.

I am also enclosing copies of two Federal court opinions dealing with the ethical standards applicable to the identification of unindicated co-conspirators. These standards clearly apply to this case and set the ethical tone we all should follow.

I am very pleased that after seven years of investigation someone has finally asked me for help at the Auditor General Office and I shall do everything ethically possible to provide it.

Sincerely,


JAMES J. WEST

United States Attorney

Enclosures

cc: James McAneny, Esq.
Attorney General of Pennsylvania
FBI (Harrisburg)
IRS (Harrisburg)

FBI SUMMARIES

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U.S. Department of Justice

Federal Bureau of Investigation

Philadelphia, Pennsylvania

July 7, 1988

**JAMES C. MELO, JR.,
EMPLOYEE,
PENNSYLVANIA DEPARTMENT OF THE
AUDITOR GENERAL**

John M. Kerr, New Cumberland, Pennsylvania, was interviewed on various dates by agents of the Federal Bureau of Investigation (FBI) beginning in November, 1986.

John Kerr acknowledged and admitted that while he was the Executive Deputy to the Auditor General, a position he held from January 18, 1977, until his voluntary resignation on February 4, 1983, he was involved in the selling of jobs in the Department of the Auditor General. Al Benedict, the Auditor General of the Commonwealth of Pennsylvania from January 18, 1977, until the third Tuesday in January, 1985, was also involved in the selling of jobs with John Kerr. Kerr and Benedict personally and professionally profited from the sale of these jobs. The job selling was handled directly by John Kerr with the collaboration and cognizance of Al Benedict.

Kerr further acknowledged and admitted that while he was the Executive Deputy to the Auditor General, he was involved in the selling of job promotions and their consequent salary increases within the Department of the Auditor General. Al Benedict, the Auditor General, was also involved in the selling of job promotions and their consequent salary increases. John Kerr and Al Benedict personally and professionally profited from the sale of job promotions. The selling of job promotions was handled directly by John Kerr with the collaboration and cognizance of Al Benedict.

Kerr would take the job application to the Department of the Auditor General's personnel office and advised Russell Biggica, the Personnel Director at that time, or Eric Slater, the Assistant Personnel Director at that time, that this particular applicant

should be interviewed. Neither Russel Biggica nor Eric Slater were aware that a particular applicant had paid money to Kerr and Benedict for his job, but they did understand that the applicant should be hired by the Department of the Auditor General. The applicant was subsequently interviewed, usually by Eric Slater, and approximately four months after the receipt of the application and cash by John Kerr, the applicant was hired to a position in the Department of the Auditor General.

Through the utilization of the Department of the Auditor General's employment records from 1977 through 1985, transcripts of preliminary and other court hearings relative to John Kerr's trial in the job selling scheme and his memory, John Kerr identified individuals who purchased jobs in the Department of the Auditor General while he was the Executive Deputy to the Auditor General. Those individuals, the dates they were hired and other pertinent data are as follows:

James C. Melo, Jr., began employment in the Department of the Auditor General on October 11, 1977, as a Field Auditor I at an annual salary of \$10,367. Money was not paid to John Kerr for this job placement, but \$2,700 was paid to Kerr in late 1978 by "Reds" Barbone, a Norristown, Pennsylvania, beer distributor for a promotion for James Melo, Barbone's son-in-law. Melo was subsequently promoted from a Field Auditor I to a Field Auditor III.

Alfred P. Benedict of Mechanicsburg, Pennsylvania, former Auditor General, Commonwealth of Pennsylvania, was interviewed on various dates by agents of the FBI commencing on July 31, 1987.

From January 18, 1977, until his voluntary resignation on February 4, 1983, John Kerr served as Al Benedict's Deputy Auditor General at the Department of the Auditor General. Kerr had been very active in Benedict's political career and served as his campaign manager in his race for the Auditor General's office as well as his campaign manager in his race for the Treasurer's office in 1984.

Al Benedict acknowledged and admitted that while he was the Auditor General of the Commonwealth of Pennsylvania, a position he held from January 18, 1977, until January 21, 1985, he was aware that John Kerr was selling jobs at the Department

of the Auditor General and that he personally and professionally benefited from the sale of these jobs. Although the job selling scheme was handled by John Kerr, Benedict collaborated with Kerr and gave his consent to Kerr to carry out this illegal activity.

Al Benedict acknowledged and admitted that while he was the Auditor General of the Commonwealth of Pennsylvania, he was aware that John Kerr was selling job promotions and their consequent salary increased within the Department of the Auditor General. Benedict personally and professionally benefited from the sale of these promotions. Although the promotion selling scheme was handled by John Kerr, Benedict collaborated with Kerr and gave his consent to Kerr to carry out this illegal activity.

U.S. Department of Justice
Federal Bureau of Investigation

Philadelphia, Pennsylvania
July 7, 1988

**JOHN E. WEIKEL,
EMPLOYEE,
PENNSYLVANIA DEPARTMENT OF THE
AUDITOR GENERAL**

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Kerr further acknowledged and admitted that while he was the Executive Deputy to the Auditor General, he was involved in the selling of job promotions and their consequent salary increases within the Department of the Auditor General. Al Benedict, the Auditor General, was also involved in the selling of job promotions and their consequent salary increases. John Kerr and Al Benedict personally and professionally profited from the sale of job promotions. The selling of job promotions was handled directly by John Kerr with the collaboration and cognizance of Al Benedict.

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applicant should be interviewed. Neither Russell Biggica nor Eric Slater were aware that a particular applicant had paid money to Kerr and Benedict for his job, but they did understand that the applicant should be hired by the Department of the Auditor General. The applicant was subsequently interviewed, usually by Eric Slater, and approximately four months after the receipt of the application and cash by John Kerr, the applicant was hired to a position in the Department of the Auditor General.

Al Benedict acknowledged and admitted that while he was the Auditor General of the Commonwealth of Pennsylvania, he was aware that John Kerr was selling job promotions and their consequent salary increases within the Department of the Auditor General. Benedict personally and professionally benefited from the sale of these promotions. Although the promotion selling scheme was handled by John Kerr, Benedict collaborated with Kerr and gave his consent to Kerr to carry out this illegal activity.

U.S. Department of Justice
Federal Bureau of Investigation

Philadelphia, Pennsylvania
July 7, 1988

**LUCILLE RUSSELL,
EMPLOYEE,
PENNSYLVANIA DEPARTMENT OF THE
AUDITOR GENERAL**

John M. Kerr, New Cumberland, Pennsylvania, was interviewed on various dates by agents of the Federal Bureau of Investigation (FBI) beginning in November, 1986.

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Through the utilization of the Department of the Auditor General's employment records from 1977 through 1985, transcripts of preliminary and other court hearings relative to John Kerr's trial in the job selling scheme and his memory, John Kerr identified individuals who purchased jobs in the Department of

the Auditor General while he was the Executive Deputy to the Auditor General. Those individuals, the dates they were hired and other pertinent data are as follows:

Robert Russell, currently a Deputy to Don Bailey, the Auditor General of the Commonwealth of Pennsylvania, made a contribution of \$1,000 to Al Benedict's campaign fund. In return for this payment, Russell's wife, Lucille Russell, was given a job in the Department of the Auditor General. Lucille Russell began employment at the Department of the Auditor General on January 14, 1980.

Alfred P. Benedict of Mechanicsburg, Pennsylvania, former Auditor General, Commonwealth of Pennsylvania, was interviewed on various dates by agents of the FBI commencing on July 31, 1987.

From January 18, 1977, until his voluntary resignation on February 4, 1983, John Kerr served as Al Benedict's Deputy Auditor General at the Department of the Auditor General. Kerr had been very active in Benedict's political career and served as his campaign manager in his race for the Auditor General's office as well as his campaign manager in his race for the Treasurer's office in 1984.

Al Benedict acknowledged and admitted that while he was the Auditor General of the Commonwealth of Pennsylvania, a position he held from January 18, 1977, until January 21, 1985, he was aware that John Kerr was selling jobs at the Department of the Auditor General and that he personally and professionally benefited from the sale of these jobs. Although the job selling scheme was handled by John Kerr, Benedict collaborated with Kerr and gave his consent to Kerr to carry out this illegal activity.

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U.S. Department of Justice
Federal Bureau of Investigation

Philadelphia, Pennsylvania
July 7, 1988

WALTER W. SPEELMAN, JR.,
EMPLOYEE,
PENNSYLVANIA DEPARTMENT OF THE
AUDITOR GENERAL

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Through the utilization of the Department of the Auditor General's employment records from 1977 through 1985, transcripts of preliminary and other court hearings relative to John Kerr's trial in the job selling scheme and his memory, John Kerr identified individuals who purchased jobs in the Department of the Auditor General while he was the Executive Deputy to the Auditor General. Those individuals, the dates they were hired and other pertinent data are as follows:

John Kerr advised that Michael Hanna, Sr., and Nick Saittis were not the only individuals who referred job aspirants to the Department of the Auditor General. Dennis J. Sabo, a Dauphin County Benedict Coordinator and an employee of the Department of the Auditor General since November, 1977, brought several people to John Kerr's attention. Sabo did not pay for his employment but did, in fact, collect money from others which money as he turned over to Kerr.

An individual who paid money to Dennis Sabo was Rachael Marte, the mother-in-law of Walter W. Speelman, Jr., who was hired on September 22, 1980, as Liquor Store Examiner I at an annual salary of \$12,968. Mrs. Marte had previously made a cash payment in the amount of \$1,500 to Dennis Sabo who, in turn, paid \$1,000 of this cash to John Kerr. Marte also made a payment for a job for John E. Weikel.

Alfred P. Benedict of Mechanicsburg, Pennsylvania, former Auditor General, Commonwealth of Pennsylvania, was interviewed on various dates by agents of the FBI commencing on July 31, 1987.

From January 18, 1977, until his voluntary resignation on February 4, 1983, John Kerr served as Al Benedict's Deputy Auditor General at the Department of the Auditor General.

Kerr had been very active in Benedict's political career and served as his campaign manager in his race for the Auditor General's office as well as his campaign manager in his race for the Treasurer's office in 1984.

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U.S. Department of Justice
Federal Bureau of Investigation

Philadelphia, Pennsylvania
July 7, 1988

**DON RUGGERIO,
EMPLOYEE,
PENNSYLVANIA DEPARTMENT OF THE
AUDITOR GENERAL**

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John Kerr acknowledged and admitted that while he was the Executive Deputy to the Auditor General, a position he held from January 18, 1977, until his voluntary resignation on February 4, 1983, he was involved in the selling of jobs in the Department of the Auditor General. Al Benedict, the Auditor General of the Commonwealth of Pennsylvania from January 18, 1977, until the third Tuesday in January, 1985, was also involved in the selling of jobs with John Kerr. Kerr and Benedict personally and professionally profited from the sale of these jobs. The job selling was handled directly by John Kerr with the collaboration and cognizance of Al Benedict.

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Through the utilization of the Department of the Auditor General's employment records from 1977 through 1985, transcripts of preliminary and other court hearings relative to John Kerr's trial in the job selling scheme and his memory, John Kerr identified individuals who purchased jobs in the Department of the Auditor General while he was the Executive Deputy to the Auditor General. Those individuals, the dates they were hired and other pertinent data are as follows:

Don Ruggerio began employment with the Department of the Auditor General on February 14, 1977, as a Field Auditor I at an annual salary of \$10,367 after Richard K. Walton of Berwick, Pennsylvania, the Columbia County Democratic Chairman, gave John Kerr \$1,000 in cash at Al Benedict's inauguration in January, 1977.

Alfred P. Benedict of Mechanicsburg, Pennsylvania, former Auditor General, Commonwealth of Pennsylvania, was interviewed on various dates by agents of the FBI commencing on July 31, 1987.

From January 18, 1977, until his voluntary resignation on February 4, 1983, John Kerr served as Al Benedict's Deputy Auditor General at the Department of the Auditor General. Kerr had been very active in Benedict's political career and served as his campaign manager in his race for the Auditor General's office as well as his campaign manager in his race for the Treasurer's office in 1984.

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U.S. Department of Justice
Federal Bureau of Investigation

Philadelphia, Pennsylvania
July 7, 1988

**JAMES DISCOSIMO,
EMPLOYEE,
PENNSYLVANIA DEPARTMENT OF THE
AUDITOR GENERAL**

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John Kerr acknowledged and admitted that while he was the Executive Deputy to the Auditor General, a position he held from January 18, 1977, until his voluntary resignation on February 4, 1983, he was involved in the selling of jobs in the Department of the Auditor General. Al Benedict, the Auditor General of the Commonwealth of Pennsylvania from January 18, 1977, until the third Tuesday in January, 1985, was also involved in the selling of jobs with John Kerr. Kerr and Benedict personally and professionally profited from the sale of these jobs. The job selling was handled directly by John Kerr with the collaboration and cognizance of Al Benedict.

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the Auditor General while he was the Executive Deputy to the Auditor General. Those individuals, the dates they were hired and other pertinent data are as follows:

Kerr advised that a source of illegal money which was received by he and Al Benedict while he was the Executive Deputy to the Auditor General came from his close personal friend Guido Alesi. Kerr initially met Alesi in 1972 while Alesi was the Huntingdon County Democratic Chairman and an employee of the Pennsylvania Department of Transportation, serving as the Supervisor of Highways in Huntingdon County. At that time, Kerr was working for the State Democratic Party. Kerr explained that Alesi was a very active fund raiser in the Huntingdon County area raising between \$9,000 and \$10,000 per year in legal campaign contributions for the State Democratic Party.

In 1976, Alesi made a \$1,000 personal contribution to Al Benedict's campaign fund and was responsible for an additional \$10,000 to \$20,000 in legal campaign contributions from Huntingdon County for the Al Benedict campaign. For his efforts, several jobs in the Department of the Auditor General were given to people who were recommended to Kerr by Alesi. In 1978, when Richard Thornburgh was elected Governor of the Commonwealth of Pennsylvania, Alesi lost his job at the Department of Transportation. He was subsequently given a job in the Department of the Auditor General as a Field Auditor III at an annual salary of \$17,174. He began his employment with the Department of the Auditor General on April 23, 1979. After Alesi began working at the Department of the Auditor General and continuing into 1980, he continued to obtain jobs within the Department of the Auditor General for individuals who made legal contributions to the general campaign fund of Al Benedict. At about this same time, however, cash payments to the campaign fund of Al Benedict began to be made to John Kerr by Guido Alesi. Kerr does not believe that a specific request was made of Guido Alesi to furnish cash payments. It was Kerr's belief that these cash payments just began to occur. Kerr never told Guido Alesi to stop making these payments in cash. Kerr did not place these cash payments into the general campaign fund of Al Benedict, but rather kept the money in his office and

co-mingled the money with other job sell cash which was then used by Kerr and Benedict as they saw fit.

Eventually, Kerr's dealings with Guido Alesi evolved into actual job and promotion selling situations. Kerr identified James Discosimo as one of these job promotion recipients. Discosimo began working for the Auditor General on January 14, 1980, as a Field Auditor III at an annual salary of \$15,863. Kerr was not sure of the amount of money Discosimo paid to Kerr and Benedict for this job, but believed the amount to be around \$1,000 in cash.

Alfred P. Benedict of Mechanicsburg, Pennsylvania, former Auditor General, Commonwealth of Pennsylvania, was interviewed on various dates by agents of the FBI commencing on July 31, 1987.

From January 18, 1977, until his voluntary resignation on February 4, 1983, John Kerr served as Al Benedict's Deputy Auditor General at the Department of the Auditor General. Kerr had been very active in Benedict's political career and served as his campaign manager in his race for the Auditor General's office as well as his campaign manager in his race for the Treasurer's office in 1984.

Al Benedict acknowledged and admitted that while he was the Auditor General of the Commonwealth of Pennsylvania, a position he held from January 18, 1977, until January 21, 1985, he was aware that John Kerr was selling jobs at the Department of the Auditor General and that he personally and professionally benefited from the sale of these jobs. Although the job selling scheme was handled by John Kerr, Benedict collaborated with Kerr and gave his consent to Kerr to carry out this illegal activity.

Al Benedict acknowledged and admitted that while he was the Auditor General of the Commonwealth of Pennsylvania, he was aware that John Kerr was selling job promotions and their consequent salary increased within the Department of the Auditor General. Benedict personally and professionally benefited from the sale of these promotions. Although the promotion selling scheme was handled by John Kerr, Benedict collaborated with Kerr and gave his consent to Kerr to carry out this illegal activity.

U.S. Department of Justice
Federal Bureau of Investigation

Philadelphia, Pennsylvania
July 7, 1988

LOUISE JURIK,
EMPLOYEE,
PENNSYLVANIA DEPARTMENT OF THE
AUDITOR GENERAL

John M. Kerr, New Cumberland, Pennsylvania, was interviewed on various dates by agents of the Federal Bureau of Investigation (FBI) beginning in November, 1986.

John Kerr acknowledged and admitted that while he was the Executive Deputy to the Auditor General, a position he held from January 18, 1977, until his voluntary resignation on February 4, 1983, he was involved in the selling of jobs in the Department of the Auditor General. Al Benedict, the Auditor General of the Commonwealth of Pennsylvania from January 18, 1977, until the third Tuesday in January, 1985, was also involved in the selling of jobs with John Kerr. Kerr and Benedict personally and professionally profited from the sale of these jobs. The job selling was handled directly by John Kerr with the collaboration and cognizance of Al Benedict.

Kerr further acknowledged and admitted that while he was the Executive Deputy to the Auditor General, he was involved in the selling of job promotions and their consequent salary increases within the Department of the Auditor General. Al Benedict, the Auditor General, was also involved in the selling of job promotions and their consequent salary increases. John Kerr and Al Benedict personally and professionally profited from the sale of job promotions. The selling of job promotions was handled directly by John Kerr with the collaboration and cognizance of Al Benedict.

Kerr identified Mike Hanna, Sr., the Democratic Chairman of Washington County, Pennsylvania, and the former District Attorney of Washington County, Pennsylvania, (now deceased), as an active participant in the job and promotion selling scheme. Kerr first met Hanna in 1972 while Kerr was working for the

State Democratic Party. During the summer of 1976, Hanna requested and subsequently received a Legal Counsel position within the Department of the Auditor General. Hanna did not buy this job from Kerr, although he may have made a \$500 donation to Al Benedict's campaign fund. Hanna was given his job because Kerr felt that it was important to have a man of Hanna's power and influence on the Auditor General's side. Hanna did little or no work for the Department of the Auditor General and what work he did was done through his private law office in Washington County, Pennsylvania. Kerr identified Nick Saittis as being an active participant in the job and promotion selling scheme. Saittis' application for employment at the Department of the Auditor General was the first application and corresponding cash payment that Kerr received from Mike Hanna. Saittis went to work for the Department of the Auditor General on August 29, 1978.

Through the utilization of the Department of the Auditor General's employment records from 1977 through 1985, transcripts of preliminary and other court hearings relative to John Kerr's trial in the job selling scheme and his memory, John Kerr identified individuals who purchased jobs in the Department of the Auditor General while he was the Executive Deputy to the Auditor General. Those individuals, the dates they were hired and other pertinent data are as follows:

John Kerr advised that an individual who initially paid for his own job in the Department of the Auditor General and who then became involved as a broker for jobs and job promotions for other individuals was John Lignelli who currently resides at 122 Kennic Avenue, Donora, Pennsylvania. Lignelli, who began his employment in the Department of the Auditor General on March 26, 1979, worked at the Department of the Auditor General until the current Auditor General, Don Bailey, took office in 1986. Kerry speculated that Lignelli was fired by Bailey because Bailey was aware of Lignelli's previous involvement in the job sale scheme.

The fact that Lignelli was involved in the job sale scheme never came to light during Kerry's trial in 1984. During that trial, Lignelli falsely testified that he had no prior knowledge that an individual could buy a job or a promotion in the

Department of the Auditor General. Lignelli testified that he had no involvement in this job sale scheme and never paid any money directly to John Kerr. Kerr stated that Lignelli gave him numerous envelopes containing cash and employment applications for new jobs and cash for promotions for current employees. Although Lignelli never came to John Kerr's office at the Finance Building in Harrisburg, Lignelli did meet with Kerr on two occasions at the Harrisburg International Airport. On both occasions, Lignelli, utilizing Commonwealth of Pennsylvania vouchers, flew into Harrisburg from Pittsburgh and gave Kerr envelopes containing cash and job applications for individuals seeking employment with the Department of the Auditor General. Following their meetings in the airport cafeteria at the Harrisburg International Airport, Kerr returned to his office in Harrisburg and Lignelli flew back to Pittsburgh.

Kerr also met with Lignelli at the Howard Johnson Motel and Restaurant in New Stanton, Pennsylvania, and the Howard Johnson Restaurant in Monroeville, Pennsylvania, at which time envelopes containing cash and job applications were given to Kerr by Lignelli. Kerr and Lignelli also met at the Pittsburgh International Airport in the Buffetaria on two or three occasions at which time envelopes containing cash and job applications were given to Kerr. Kerr and Lignelli also met following various fund raisers that were held in the Pittsburgh area at which time envelopes containing cash and job applications were given to Kerr by Lignelli.

Kerr estimated that John Lignelli gave him envelopes containing between \$10,000 and \$20,000 in cash. Kerr believed that Lignelli was not directly responsible for obtaining jobs for individuals, but rather worked in concert with Michael Hanna, Sr. It is Kerr's belief that most of the money that Lignelli gave him originated with Michael Hanna, Sr., in Washington County, Pennsylvania.

Kerr did know that John Lignelli of Donora, Pennsylvania, was responsible for obtaining job promotions for three individuals. Lignelli gave Kerr an envelope containing \$1,000 in cash for job promotion for an individual who had previously paid for his job as an Auditor in the Police and Fire Audit Section of the Department of the Auditor General. Lignelli also gave Kerr an

envelope containing \$1,000 in cash for a job promotion for Frank Zatta, an Auditor in the Police and Fire Audit Section, and an envelope containing cash for a promotion for Louise Jurik, who was assigned to the School Audit Section of the Department of the Auditor General. The fact that these individuals paid for promotions and that Kerr received money from Lignelli for their promotions was never brought up during Kerr's trial in 1984. These individuals are still employed with the Department of the Auditor General.

Alfred P. Benedict of Mechanicsburg, Pennsylvania, former Auditor General, Commonwealth of Pennsylvania, was interviewed on various dates by agents of the FBI commencing on July 31, 1987.

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WITNESS STATEMENT

I, James C. Melo, Jr., have been informed by Jim McAneny and Nick J. Ficco, Jr. who stated are Chief Legal Counsel and Bureau Director with the Bureau of Investigations, Auditor General's Department, Commonwealth of Pennsylvania, and that he is conducting an investigation of alleged job selling.

MCANENY: Today is Thursday, September 22, 1988, at 1:43 p.m, my name is James McAneny, I'm Chief Counsel in the Department of Auditor General, with me is Nick Ficco, Director of the Bureau of Investigations, and James Melo, who is an employe of the department. Mr. Melo, to begin with, I'd like to tell you that we are conducting an inquiry based upon certain allegations that we have received from the United States Attorney's Office regarding activities during the Benedict Administration. The nature of the allegations, and the purpose of our investigation is to conduct an administrative inquiry to determine if any disciplinary action will be called for. For other information, however, if evidence of criminal misconduct should be disclosed as a result of this investigation, we would be referring that, of course, to the appropriate authorities. Our purpose, however, is purely administrative. But because of the possible risk of criminal disclosures, you would have a right to have counsel present in this meeting, and if you wish, we can terminate the meeting at this time so that you can obtain counsel and have them be present at the time of the interview. Otherwise, if you wish to proceed at this time, you can, nevertheless, interrupt at any point, asked to have this session terminated, obtain counsel then, consult with them, and have him be present for any continuation. Do you understand that, understand what I'm saying?

MELO: Yes.

MCANENY: Do you wish to proceed at this point?

MELO: Well, can I get a more definitive explanation?

MCANENY: The allegations concern job selling during the Benedict Administration. It's about all I can tell you before going into specific questions. Anytime during the questioning

that you decide you want to stop it and obtain counsel, you have every right to do so.

MELO: Yeah, I'll answer any questions. Well, maybe I don't fully understand, so maybe that's what I ought to do.

MCANENY: You have that right.

FICCO: You have that right.

MCANENY: And we're not going to hold it against you if you want to assert that right, trust me. The information we have, if it were true, it may or may not implicate you in criminal conduct, I can tell you that.

MELO: Yeah well, that's been so long ago. You're going to ask me questions I might not, you know.

FICCO: If you don't know, or you can't answer, or you can't remember, then you just simply state that for the record.

MELO: Remember an answer. That's what I'm saying.

FICCO: No one is going to hold that against you because you didn't know or you don't remember.

MELO: Yeah, that's what I'm saying.

MCANENY: A statement cannot compel you, or we can't compel you to remember it clear and plainly.

MELO: I . . . clear and plainly over years.

MCANENY: Obviously, if you can't remember, you can't remember the answer to any specific question; but that would be your answer to it. I have no problem with that.

MELO: I understand this is tape recorded conversation?

FICCO: Yeah.

MCANENY: This is all on tape up to now.

MELO: And who is this to benefit for, who does this go to?

MCANENY: This is for the benefit of the Department of the Auditor General. If there's any criminal misconduct disclosed, as a result of it though, that we would be required to turn over to the Attorney General Office.

MELO: No, well you know, I'll answer to the best of my ability.

MCANENY: That's all you can be asked to do.

FICCO: That's all we want you to do. Please raise your right hand? Do you swear that the testimony that you are about to give here today is true and correct to the best of your ability and knowledge?

MELO: Yes.

FICCO: Would you please state your full name for the record?

MELO: James Melo.

MCANENY: Mr. Melo, do you recall when you began working for the Department of the Auditor General?

MELO: Approximately about 11 years ago.

MCANENY: At what capacity were you hired?

MELO: I worked as an auditor 1, I was in — originally hired, I was in School Audits, I didn't care for the work — I left, and from what I can remember I was with the understanding if there something else, that I could be recalled at a future time.

MCANENY: Were you, in fact, recalled?

MELO: Yes. I came back, Oh I don't know, maybe seven months later, something like that.

MCANENY: In the same capacity; a field auditor 1?

MELO: Yes, in a different bureau, County Audits, where I'm at.

MCANENY: That's where you are right now, County Audits?

MELO: Yes.

MCANENY: How long were you a field auditor 1, after you came on with the County?

MELO: A couple of years or more.

MCANENY: And at that time you received a promotion?

MELO: That was later.

MCANENY: About when, do you recall?

MELO: I was 1, a field auditor 1 for I don't know, for years or something.

MCANENY: And then you received a promotion?

MELO: Yes.

MCANENY: Do you recall to what level?

MELO: Three.

MCANENY: You were promoted from a field auditor 1 to a field auditor 3?

MELO: Yes.

MCANENY: Okay, do you recall approximately when that promotion took place?

MELO: No I don't.

MCANENY: But it would have been approximately, you said a couple years after you had come back?

MELO: After I was a one for about, I guess, about three years, maybe four.

MCANENY: Do you recall any of the circumstances surrounding your promotion?

MELO: Not really. I was a good employe, I learned all the procedures of the audit.

MCANENY: Had you requested a promotion?

MELO: That I don't remember.

MCANENY: Did anybody ever talk to you to explain why you were promoted from a one to a three, instead of from a one to a two?

MELO: I thought it was on doing good work.

MCANENY: Your bureau director, at that time, would have been Phil Dowd?

MELO: Yes.

MCANENY: Do you know if he recommended you for the promotion?

MELO: That I don't remember.

MCANENY: Do you have any information, or were you ever told by anyone that money had been paid to John Kerr to obtain your promotion?

MELO: No.

MCANENY: Were you ever called before the — or called for an interview by state authorities during the Kerr investigation?

MELO: Once, someone came to see at the job site, and the individual, I forget his capacity, had asked me some questions, I answered them, and he said to me, if we need you, we will get back in touch with you, and I never heard about it again.

MCANENY: That was back at the time when they were investigating John Kerr?

MELO: I would assume so; it's been quite a few years ago.

MCANENY: Would it have been someone from this department's Bureau of Investigations, or you just can't recall?

MELO: I just don't recall. I know the man was in some kind of official capacity or maybe it was two men. I think maybe two men.

MCANENY: Do you recall what kind of questions they asked you?

MELO: I think they explained to me what they were, the reason, and what for, but the questions I don't remember. It's been, Jesus.

MCANENY: What reason did they give you for wanting to talk to you?

MELO: What reason did they give me?

MCANENY: Yeah.

MELO: Well, they wanted to know if I knew anything about this, or pretty much what you are asking me about; if I knew anything about this Mr. Kerr fella.

FICCO: Mr. who?

MELO: Kerr, is that the name you said, yeah.

MCANENY: Kerr, John Kerr.

MELO: Right.

MCANENY: Was your father-in-law's name mentioned during that discussion?

MELO: My who?

MCANENY: Your father-in-law?

MELO: My father-in-law?

MCANENY: Yeah.

MELO: No.

MCANENY: Did your father-in-law ever discuss anything that he might have done to help you get your promotion?

MELO: No.

MCANENY: Never indicated.

MELO: My father-in-law has been dead for quite a few years.

FICCO: Who was your father-in-law, what was his name?

MELO: Roger DeBedidetto.

FICCO: Were you married — is this your only marriage, or were you married before?

MELO: Yes, no, it's my only marriage.

MCANENY: Are you related in any way to a gentleman named Barbone in Norristown?

MELO: Yes.

MCANENY: And what is that relationship?

MELO: It's my sister-in-law's husband. It's his last name.

MCANENY: Is he known by the nickname of Reds?

MELO: Yes.

MCANENY: In the questioning by whoever came to see you back around the time of the Kerr investigation, did those gentlemen ask you any questions about him?

MELO: About who?

MCANENY: Mr. Barbone.

MELO: No.

MCANENY: Has Mr. Barbone ever indicated to you that he helped you obtain a promotion in the department?

MELO: No.

MCANENY: Do you know if Mr. Barbone was a political financial supporter of Al Benedict's campaign?

MELO: Not that I know of.

MCANENY: Do you have any other questions Nick?

FICCO: I'm not quite sure I understand. It's your sister-in-law's.

MELO: Husband.

FICCO: Husband.

MELO: Yes.

FICCO: Okay. And you never knew him or..

MELO: Christ, the man is my brother-in-law through marriage.

FICCO: Through marriage, alright, I understand that. Did he ever talk to you or discuss with you?

MELO: He may have, it's been a long time, I don't remember.

FICCO: Do you know if he was ever called before the Grand Jury?

MELO: Not to my knowledge?

FICCO: Have you discussed any of this with him lately?

MELO: Discuss what with him lately?

FICCO: Job selling or..

MELO: I never thought as though I was effected in any way.

FICCO: Did you see it in the paper?

MELO: That's my only, in the newspaper, television, things of that nature.

FICCO: Did you feel that you were one of these 20, 21 that they were mentioning were still working for the auditor general?

MELO: No. As a matter of fact, are you talking about something recent?

FICCO: Yeah.

MELO: I've seen nothing in the newspapers recent. I'm thinking when everything was in the newspaper quite awhile back.

FICCO: It's possible that it could have just appeared in this area. You're from up in the Norristown area.

MELO: No I'm from Bucks County.

FICCO: Bucks County.

MELO: Approximately 25, 30 miles from Norristown.

FICCO: I have no further questions.

MCANENY: Alright, Mr. Melo, let me explain the reason we are conducting this inquiry, again, is because of information we've received from the United States Attorney, regarding various employees who are still with the department. The unfortunate aspect of that is that apparently the auditor general's opponent, in the upcoming election, has also been given some information regarding this fact, because there have been a number of press releases from here in the last few weeks demanding disclosure of the names of the 20 employees who allegedly purchased their jobs. I can assure you that it is not the intention of the department of the auditor general to release the names of the people who have been accused, but where there is no evidence that they did anything. No one needs that type of defamation; damage to their reputation. If they are only accusations.

MELO: Well, I certainly agree with you 100 percent.

MCANENY: And because of that, we are instructing everyone that comes in here that one thing that the auditor general will take seriously and will consider the most strenuous discipline, would be a violation of the confidentiality of this meeting. We don't want you discussing this matter with anyone outside this room as to the nature of the discussion, other than if you were contacted by the appropriate authority, prosecutor, or something of that nature, or you can discuss it with your own

legal counsel. But other than that, we don't want this information leaked out, don't want to have to read anybody's names in the newspaper as these people are being investigating for buying jobs ten years ago, or whatever, and it really boils down to that rule of confidentiality will be as strictly enforced as we can. I want you to understand that that is, it is absolute.

MELO: I entirely agree with you.

MCANENY: So as long as you understand that, I think we're finished here, we can go off the record again.

— END OF STATEMENT —

AFFIDAVIT

I, _____
(have had read to me) (have read) this statement which begins on page (1) and ends on page 9. I fully understand the contents of the entire statement made by me. This statement is true. I have initialed all corrections and have initialed the bottom of each page containing statement matter. This statement has been made by me freely without hope of benefit or reward, without threat of punishment, and without coercion, freely without hope of benefit unlawful influence, or reward, without threat of punishment, or unlawful inducement.

(Signature of Person Making Statement)

SWORN TO AND SUBSCRIBED BEFORE ME THIS
22nd day of September 1988, AT Harrisburg, PA.

Special Agent
Bureau of Investigations
Department of the Auditor General

This oath is administered by virtue of the authority vested in me by Don Bailey, Auditor General, pursuant to the provisions of Section 517 of the Act of April 9, 1929, P. L. 177, as amended.

WITNESS STATEMENT

I, John Weikel, have been informed by Jim McAneny and Nick J. Ficco. Jr. who stated are Chief Counsel and Bureau Director with the Bureau of Investigations, Auditor General's Department, Commonwealth of Pennsylvania, and that he is conducting an investigation of alleged job selling.

MCANENY: Today is Thursday, October the 6th, the time is 2:49 p.m. My name is James McAneny, I'm Chief Counsel in the Department of the Auditor General, with me is Nick Ficco, Director of our Bureau of Investigations, and John Weikel, an employee in the department. John, so I can explain to you the reason we've asked you to come in. You may be aware from press accounts, but the department has received certain allegations from the United States Attorney's Office regarding alleged misconduct during the Benedict administration, and we are conducting an internal investigation to determine whether or not any form of disciplinary, or other administrative action would be warranted, as a result of those allegations. The purpose of our review is simply that, civil; just to decide whether or not we can show just cause to enforce any kind of discipline. However, because of the nature of the allegations, it is possible that evidence of criminal misconduct could be disclosed in our investigation, in which case would turn that information over to the attorney general and to the U.S. Attorney. Because of that possible risk, you're advised that you would have a right to have counsel present with you during this interview, and if you so desire, we'll stop now until you have a chance to get a lawyer to come in with you. If you prefer, we can proceed at this time, but if at any point the questioning becomes such that you wish to stop the interview, we will do that. We won't be prejudice by it, and you'll have an opportunity to get a lawyer to come in at a later time. Do you understand that?

WEIKEL: Yeah.

MCANENY: Could you do me the favor and speak up for the microphone. As you can see, we're on tape and rather than have somebody sit in here and take shorthand, we're using the tape recording, as a method of recording the interview. Nick would you?

FICCO: You're willing to talk to us then?

WEIKEL: Yes I am.

FICCO: Please raise your right hand John. Do you swear that the testimony you're about to give is true and correct to the best of your knowledge and belief?

WEIKEL: I do.

FICCO: Please state your full name for the record?

WEIKEL: John Earl Weikel.

MCANENY: John, I'm sure that this is not a matter which is new to you. My information indicates you've been through this a number of times in the past, and I don't really have anything new to offer. Let's start when you were employed by the Department of the Auditor General. Do you recall when that was?

WEIKEL: I was hired October '83, I believe it was.

MCANENY: What do you recall about the circumstances surrounding your obtaining that employment?

WEIKEL: All I know is, I got an application from my mother-in-law, I filled it out, and gave it back to her, and that's it.

MCANENY: Okay, what was your mother-in-law's name?

WEIKEL: Rachel Marty.

MCANENY: After that, were you, at any time, called by the attorney general, or the state grand jury to testify?

WEIKEL: Yeah and got a subpoena from the Attorney General's Office.

MCANENY: Okay, that would have been, how long after you came to work?

WEIKEL: It would have been about the middle of November, the same year.

MCANENY: The following month?

WEIKEL: Yeah.

MCANENY: Did you go in to speak with them in an interview first, or were you called directly before the Grand Jury?

WEIKEL: No, they came up to our house, gave us a subpoena, then we went down, well I wasn't there, so I had to leave work here and go down and pick it up down there in Strawberry Square.

MCANENY: Okay. Were you asked about how you obtained your employment with the department?

WEIKEL: Yes I was.

MCANENY: Were you asked if you had purchased your job with the department?

WEIKEL: Yes I was.

MCANENY: And did you purchase your job with the department?

WEIKEL: No I didn't.

MCANENY: Do you have any information as to whether any other person made a payment to obtain your employment with the department?

WEIKEL: Last year the agents came up, I found out my mother-in-law donated some money, and that's all I know.

MCANENY: Your mother was, your mother-in-law, rather, was also subpoenaed?

WEIKEL: Yes.

MCANENY: Before the Grand Jury, was she not?

WEIKEL: Yes she was.

MCANENY: Alright, were you ever told that she was granted immunity from prosecution for her testimony?

WEIKEL: No.

MCANENY: Were you ever offered immunity from prosecution in return for testimony against John Kerr?

WEIKEL: Yes.

MCANENY: Did you accept that grant of immunity?

WEIKEL: Yeah.

MCANENY: Did you accept that grant of immunity?

WEIKEL: Yeah.

MCANENY: Did you testify against Mr. Kerr?

WEIKEL: No, they didn't — I mean, when they subpoenaed us and told us we had immunity and everything, but I didn't know nothing to tell them so I couldn't. They never called me into court or anything.

MCANENY: Were you ever suspended from your employment with the department pending an investigation into this matter?

WEIKEL: No, I was fired.

MCANENY: You were fired? when did this happen?

WEIKEL: Let's see, October — they fired me about the middle of November, and then they called me back near the end of December.

MCANENY: Were you interviewed by investigators from this department, during that period between your firing and when you were called back?

WEIKEL: I can't really remember, to tell you the truth. I don't know if I talked to anybody in here or not. It may have been, I couldn't really tell you.

MCANENY: Do you know if anyone talked with Rachel Marty, during that period?

WEIKEL: No I don't.

MCANENY: Have you ever been questioned regarding this matter other than by the Attorney General's Office and possibly someone from this department?

WEIKEL: No.

MCANENY: You have not been called by the United States Attorney, or the FBI?

WEIKEL: No.

MCANENY: You've not been contacted by the Attorney General's Office since that time?

WEIKEL: No.

MCANENY: Do you have anything Nick?

FICCO: What type of donation, John, did Mrs. Marty place?

WEIKEL: \$1,500.

FICCO: \$1,500. Who did she give that to?

WEIKEL: From what I understand, a Denny Zabo.

FICCO: When did she relate this to you that she gave it to him?

WEIKEL: I only found out after we got the subpoena from the attorney general.

FICCO: Were you ever given any money?

WEIKEL: What do you mean?

FICCO: Did you ever give any money to the auditor general, at that time? Did you ever give any money to John Kerr?

WEIKEL: No.

MCANENY: John, what was your employment status at the time you got the job with this department?

WEIKEL: I was unemployed.

MCANENY: How long had you been unemployed?

WEIKEL: About 2-1/2 years.

MCANENY: When you say that you had, you found out that your mother-in-law had made a \$1,500 contribution after you were served with a subpoena; how did you find that out?

WEIKEL: Well, through going through court and that, and she told us after she gave us a subpoena and that.

MCANENY: Oh, she told you.

WEIKEL: Yeah.

MCANENY: Did she ever tell you that there was a relationship between that and obtaining your job?

WEIKEL: No, she just said that she made a donation.

FICCO: Did she ever say if anyone asked her to make the donation, or she do it on her own?

WEIKEL: No, she didn't tell me.

MCANENY: I have no other questions, do you Nick?

FICCO: No.

MCANENY: Alright John, nothing new under the sun, it appears. I want you to be aware that the auditor general is conducting this investigation because of the information we've received from the attorney general's office. The information, apparently, is nothing different than what was previously investigated by the attorney general back in the early '80s; but we are nevertheless proceeding, as required, to determine if disciplinary action can be justified. Mr. Bailey's opponent, however, in this political campaign, has made a political issue of demands for disclosure of the names of the people that were transmitted to us from the U.S. Attorney's Office. The auditor general has no intention of disclosing any names of people who have been accused of doing something where there is no evidence that would indicate that they did anything wrong. That is to protect you and the other people who have been accused, but who are innocent, rather than to protect the auditor general, who would probably be politically benefited by just disclosing the names, or firing everybody, and being done with it; but it's not something that we can justify. Where there's no knowledge on the part of

an individual that a payment may or may not have been made to obtain their job. Additionally to protect everyone involved, or everyone named by the U.S. Attorney, we're instructing each person that comes in, that this interview has to be maintained in the strictest confidence. We don't want you discussing it with co-workers or anyone else. You can discuss it with private legal counsel, if you wish; and certainly, if you're ever contacted again by the attorney general, or the U.S. Attorney, or someone like that, and they ask you about it, you tell them the truth. Other than that, please don't discuss this outside of this room. To the extent possible, the strongest disciplinary action will be taken against anyone who breeches the confidentiality of these meetings, because it just increases the likelihood that innocent people are going to be defamed by having their names connected with accusations that can't be proven. Do you understand that?

WEIKEL: Uhum.

MCANENY: Do you agree to keep this meeting confidential?

WEIKEL: Yeah.

MCANENY: Do you have anything else you want to add, or questions?

WEIKEL: No.

MCANENY: Okay.

— END OF STATEMENT —

AFFIDAVIT

I, _____
(have had read to me) (have read) this statement which begins on page (1) and ends on page 7. I fully understand the contents of the entire statement made by me. This statement is true. I have initialed all corrections and have initialed the bottom of each page containing statement matter. This statement has been made by me freely without hope of benefit or reward, without threat of punishment, and without coercion, unlawful influence, or unlawful inducement.

(Signature of Person Making Statement)

SWORN TO AND SUBSCRIBED BEFORE ME THIS 6th
day of October 1988, AT Harrisburg, PA.

Special Agent
Bureau of Investigations
Department of the Auditor General

This oath is administered by virtue of the authority vested in me by Don Bailey, Auditor General, pursuant to the provisions of Section 517 of the Act of April 9, 1929, P. L. 177, as amended.

WITNESS STATEMENT

I, Lucille Russell, have been informed by Jim McAneny and Nick J. Ficco. Jr. who stated are Chief Legal Counsel & Bureau Director with the Bureau of Investigations, Auditor General's Department, Commonwealth of Pennsylvania, and that he is conducting an investigation of alleged job selling.

MCANENY: Today is Tuesday, September 20th, the time is 1:21 p.m., my name is James McAneny, I'm Chief Counsel in the Department of the Auditor General, with me is Nick Ficco, the director of our Bureau of Investigations, and Lucille Russell, a field auditor in the Bureau of School Audits. Lucille, let me give you a little background on what we are doing here. Our department has been given information, rather abbreviation information, alleging certain misconduct among employees of this department during the Benedict Administration. We are obligated to conduct an inquiry to determine if there exist grounds for any administrative action within the department, such as a disciplinary action. That is the nature and purpose of this investigation. I should caution you that should information be obtained as a result of this investigation, which would indicate that there was criminal misconduct, we would be obligated to turn that information over to the appropriate authorities. Because of that potential risk, you are advised that you have a right to consult with legal counsel, or to have legal counsel present during this interview, and you can at this time refuse to proceed until you have a chance to obtain counsel, or we can proceed but if at any point during the questioning you feel that you wish to consult with counsel, all you have to do is say so, we'll terminate the proceeding at that point, and you will be free to go until we can arrange for you to come back in with your lawyer. Do you understand that?

LRUSSELL: Yes.

MCANENY: Okay. Do you wish to proceed at this point?

LRUSSELL: Yeah.

MCANENY: Alright thank you very much. Nick would you administer the oath please?

FICCO: Would you please raise your right hand? Do you swear that the testimony you are about to give here today is true and correct to the best of your ability and knowledge?

LRUSSELL: Yes I do.

FICCO: She's sworn.

MCANENY: Lucille, I'm going to keep this as brief as possible. What do you recall of the circumstances surrounding your original employment with the Department of the Auditor General? How did you get the job, do you know?

LRUSSELL: I filled out an application, I applied for it, came down for an interview.

MCANENY: At that time, you weren't married to Mr. Russell at that point in time, or were you?

LRUSSELL: I'm not sure when I originally filled out my application, to tell you the truth, it may have. I got married in May of '79, and I was hired in January of 1980; but my application may have been filled out. That time in there is lost. I have no idea, really.

MCANENY: Do you know if Bob had anything to do with your obtaining the job?

LRUSSELL: Meaning?

MCANENY: Did he recommend you for the job?

LRUSSELL: Yes.

MCANENY: He has already told us that he did speak with John Kerr about obtaining a job for you, okay.

LRUSSELL: Yes.

MCANENY: Other than — did he discuss that fact with you?

LRUSSELL: That he would talk to John?

MCANENY: Yes.

LRUSSELL: Yes.

MCANENY: Do you recall making any political contributions to the Benedict campaign?

LRUSSELL: Yes.

MCANENY: Can you tell what those were, what contributions they were?

LRUSSELL: If I would have known what this was all about today, I could have brought you all our canceled checks, for all our political contributions.

MCANENY: I understand that.

LRUSSELL: Okay, I remember the one, which Bob was called to testify, the one that was \$1,000 check.

MCANENY: When you say he was called to testify, that was his appearance before the Grand Jury when they were investigating John Kerr?

LRUSSELL: Yeah.

MCANENY: And that \$1,000 check, do you recall when that contribution was made, roughly?

LRUSSELL: No.

MCANENY: Was it before you were employed by the department or after?

LRUSSELL: I can honestly sit here and say I don't remember. I have the canceled check, if I can look. But I really do not remember.

MCANENY: Another question, and this is the tough one. Was that contribution made in consideration for your obtaining the job?

LRUSSELL: No. You said to answer to the best of my knowledge, that's to the best of my knowledge. The check was not made as payment for a job, which is . . . Any of our contributions made anytime during the years was never a payment for a job, and we've considered to support the people we work for. That's just the way we believe.

MCANENY: I understand that. Nick, do you have anything?

FICCO: During the time of the \$1,000, how many, how much money did you give beyond that?

MCANENY: To the Benedict campaign, or to others?

FICCO: To others, to the Benedict campaign.

LRUSSELL: From then to now?

FICCO: When you say to others, are you talking John Kerr, or are you talking . . .

LRUSSELL: No, no, no, I'm speaking of candidates.

FICCO: No, within the Benedict . . .

LRUSSELL: Well, I'm sure we made other contributions to the Benedict campaign, but the checks were made out to the Benedict campaign. We never paid anything in cash.

FICCO: It was all checks?

LRUSSELL: All checks; never made a cash donation. I know that for a fact.

FICCO: I assumed you did.

LRUSSELL: Yes I do. I don't pay cash for anything, no. And we've made contributions since then to other candidates, it's just the way know it.

MCANENY: Lucille?

LRUSSELL: Yes.

MCANENY: Have you been questioned by anyone else regarding this matter?

LRUSSELL: Years ago, during the Grand Jury investigation.

MCANENY: Did you appear before the Grand Jury?

LRUSSELL: No I did not, it was internal. It may have been the bureau.

MCANENY: Oh internal would have been this department.

LRUSSELL: Yes. I do believe it would have been within this department, or it may have been the attorney general also.

FICCO: Do you remember who within the department may have interviewed you?

LRUSSELL: No I don't. It was in Monroeville, we had a seminar, and they asked if they could meet with me for awhile, but I don't remember.

MCANENY: It may have been Justice Department, may have been someone from the Attorney General's Office.

LRUSSELL: It may have been.

MCANENY: You answered them basically the way you've answered us?

LRUSSELL: Yes.

MCANENY: Alright, the last thing that I have to go through is my warning. Don Bailey has instructed us to make certain that everyone that is brought in in this investigation is told that they are not to discuss this outside of the room. Not to discuss either their testimony, or the fact that we are investigating these matters, or who else appeared here. The primary reason for that is to assure that those persons who may have been accused, but who are not found to have committed any wrong doing, are not damaged in their reputation, or any other

way by disclosure of the fact that they've been accused. Now, I can assure you that any disclosure outside of this room, other than with an attorney, you are always entitled to consult an attorney, and actually in your particular case with the spousal relationship, you would also be permitted to discuss it with your husband. There is no way that can be barred. That is privileged communication as well. But, outside of that, there can be no disclosure of this. That will be dealt with severely by the department. I mean, we're not going to look lightly upon this kind of thing being leaked out. I don't want to see Bob Russell or Lucille Russell, or anybody else being listed in the newspaper as one of the 20 people that they have been talking about, that the press has been talking about, okay. Do you understand what I mean?

LRUSSELL: I understand.

MCANENY: Okay. Do you have anything else you want to add, or do you have any questions?

LRUSSELL: No.

— END OF STATEMENT —

AFFIDAVIT

I, _____
(have had read to me) (have read) this statement which begins on page (1) and ends on page 6. I fully understand the contents of the entire statement made by me. This statement is true. I have initialed all corrections and have initialed the bottom of each page containing statement matter. This statement has been made by me without coercion, freely without hope of benefit unlawful influence, or reward, without threat of punishment, or unlawful inducement.

(Signature of Person Making Statement)

SWORN TO AND SUBSCRIBED BEFORE ME THIS
20th day of September 1988, AT Harrisburg, PA.

Special Agent
Bureau of Investigations
Department of the Auditor General

This oath is administered by virtue of the authority vested in me by Don Bailey, Auditor General, pursuant to the provisions of Section 517 of the Act of April 9, 1929, P. L. 177, as amended.

WITNESS STATEMENT

I, Walter W. Speelman, have been informed by Jim McAneny and Nick J. Ficco, Jr. who stated are Chief Legal Counsel and Bureau Director with the Bureau of Investigations, Auditor General's Department, Commonwealth of Pennsylvania, and that he is conducting an investigation of alleged job selling.

MCANENY: Today is September 22, 1988, the time is 1:30 p.m., my name is James McAneny, I'm Chief Counsel in the Department of the Auditor General, with me is Nick Ficco, Director of the Bureau of Investigations, and Walter Speelman, who is a Liquor Store Examiner with the department. Mr. Speelman, I wish to tell you why we brought you in here today. We are conducting an inquiry, as a result of certain information which was provided to the department by federal authorities. The specific information constitutes allegations of wrongdoing while Auditor General Al Benedict was in office. The nature of our inquiry is administrative only. We are trying to determine if any disciplinary action is warranted or justified as a result of the allegations; but, for your information, if our inquiry discloses criminal misconduct, we would be turning that information over to the appropriate authorities, criminal authorities. Because of that potential, you do have a right to have counsel present with you during questioning, and you can ask us to suspend this interview at this time, and have counsel be present at a later date when we can schedule it. Otherwise, we can proceed at this point, but if at anytime during the questioning you wish to do so, you can ask to have the matter terminated at that point, so that you can consult with counsel and him present for continuation. Do you understand that?

SPEELMAN: Yes.

MCANENY: Do you wish to proceed now?

SPEELMAN: Yes.

MCANENY: Thank you. I appreciate that.

FICCO: Would you please raise your right hand? Do you swear that the testimony you are about to give here today is true and correct, to the best of your knowledge and ability?

SPEELMAN: Yes I do. Yes I do.

FICCO: Would you please state your full name for the record?

SPEELMAN: Walter William Speelman, Jr.

MCANENY: Mr. Speelman, do you recall when you started employment with the Department of the Auditor General?

SPEELMAN: September 22, 1980.

MCANENY: Do you have any information or are you aware of the circumstances by which you obtained your employment?

SPEELMAN: All I did is filled out the application, filled out an application and was hired.

MCANENY: This is old information, there's no point in my trying to beat around the bush with this thing. We have compared the allegations recently received with the information that was disclosed when John Kerr was investigated and prosecuted, and I'm going to tell you basically what the allegation is; that you're mother-in-law, Rachel Marty, gave money to Dennis Savo. Specifically that she gave him \$1,500, and that he then turned over \$1,000 of that to John Kerr to obtain the job. Now, were you questioned about this matter, during the Kerr investigation?

SPEELMAN: I was asked if I was aware of anything like that, which I wasn't.

MCANENY: I understand that. I have seen a sworn statement from your mother-in-law saying that you were not aware of anything. Were you questioned by the Attorney General's Office?

SPEELMAN: Yes I was.

MCANENY: Were you called before the Grand Jury that investigated John Kerr?

SPEELMAN: Yes I was.

MCANENY: Have you ever been questioned by any other prosecuting authorities regarding this matter?

SPEELMAN: Just — not prosecuting authorities, no. Just the previous administration's Investigations.

MCANENY: The Bureau of Investigations under Al Benedict.

SPEELMAN: Yes.

MCANENY: Do you know if your mother-in-law testified before the Grand Jury?

SPEELMAN: Yes she did.

MCANENY: Do you know if she received a grant of immunity in return for her testimony?

SPEELMAN: I believe she did; I'm not positive.

MCANENY: Well, for the record, the testimony that I have seen would indicate that she was granted a grant of immunity as was Dennis Savo, in return for their testimony against John Kerr. I would also point out for the record that all the evidence indicates that you were not aware of any monies paid on your behalf to obtain your job.

SPEELMAN: No I wasn't.

MCANENY: And you're reaffirming that fact today?

SPEELMAN: Yes I am.

MCANENY: Nick do you have any other questions?

FICCO: No I don't.

MCANENY: Okay, Mr. Speelman, do you have anything to add of your own?

SPEELMAN: Not that I can think of, nothing that probably isn't in front of you there.

MCANENY: Okay. I apologize for having to really drag you back in for what is basically a rehash of old information; but if you read the papers, I would imagine you've noted recent articles regarding approximately 20 employees of this department who allegedly purchased their jobs under the Benedict Administration and are still on the payroll. As a result of the information that the U.S. Attorney's Office did provide to us, we are conducting an inquiry. Unfortunately, a lot of it is this kind of thing. It's old information that was previously resolved, and why it's turning up again is quite beyond me. I mean, I have no idea how they would expect an arbitrator to allow us to discipline an employee for something that he didn't do, and in fact had no knowledge of. But, they sent it to us and we are conducting our inquiry. To protect those people who have been accused, but who have done nothing wrong, the auditor general has instructed us to tell everyone who comes in, under no circumstances are they to release any information about this interview,

of any kind, to any person other than an appropriate investigating agency, U.S. attorney, or the attorney general, or the FBI, or the State Police, or somebody want to talk to you about it, obviously, tell them, tell them what we discussed here.

SPEELMAN: Yes.

MCANENY: Or if you wish to discuss it with your own private legal counsel, go ahead. Beyond that, we want absolutely no disclosures.

SPEELMAN: Would you like to be notified if I was asked by any of those authorities?

MCANENY: That's, to an extent, your prerogative. Although, I would call your attention to the employee code of conduct, which would indicate that if any employee is called as a material witness, or as a defendant in a criminal prosecution, they are to notify their employer.

SPEELMAN: Okay.

MCANENY: But primarily, I am just concerned that we do not drag anyone's name through the mud for no reason. I mean, I'm sure you're aware of the fact that simply being accused can lead to an awful lot of doubt in people's minds, and I'm sure you are equally aware it's probably the most difficult thing in the world to do, is to prove a negative. Obviously there was no case that could be proven against you, or you would have been included in the Kerr trial; but it is equally impossible for you to actually prove your innocence. So we would prefer that people not be aware of the accusation, and I'm sure that you would prefer that as well, as would other innocent persons that have to be interviewed as a result of this inquiry. Your cooperation is not only requested, but I can assure you that the one thing that would lead to the most severe disciplinary action that the auditor general could use would be disclosure of this information. Other than as I told you to a proper authority. Do you understand all that?

SPEELMAN: Yes I do.

MCANENY: Do you agree to it?

SPEELMAN: I have one question.

MCANENY: Sure.

SPEELMAN: I might be way off base asking this. You had said that this was all past things that you thought were resolved, am I going to be suspended again while this investigation is going on?

MCANENY: No sir.

SPEELMAN: Okay.

MCANENY: If that would have been our intention, you would have been suspended pending the investigation.

SPEELMAN: I just wanted to make sure.

FICCO: Were you suspended the last time Walter?

SPEELMAN: Yes I was.

MCANENY: Yes he was.

SPEELMAN: I was suspended for approximately 46 days.

MCANENY: In fact, everyone that was named, or otherwise identified in the indictment papers from Kerr's trial was suspended on the day that the indictment was handed down, and it stayed that way until they could determine what was going on. But no, we are not proceeding with it. As I said, there is nothing new in these allegations that would indicated that there was any reason to suspend you. If it had been something totally new and different, we might have handled it differently, but I just, I mean the records are here in the department, the records are clear, the records are in the Attorney General's Office. If there was some basis for a suspension, you would have been suspended. At this point, no.

SPEELMAN: Okay, thank you.

MCANENY: A suspension pending an investigation with this, it's obviously, the investigation was conducted seven years ago; not much point in redoing it now. Okay, thank you.

SPEELMAN: Thanks.

— END OF STATEMENT —

AFFIDAVIT

I, _____
(have had read to me) (have read) this statement which begins on page (1) and ends on page 6. I fully understand the contents of the entire statement made by me. This statement is true. I have initialed all corrections and have initialed the bottom of each

page containing statement matter. This statement has been made by me freely without hope of benefit or reward, without threat of punishment, and without coercion, unlawful influence, or unlawful inducement.

(Signature of Person Making Statement)

SWORN TO AND SUBSCRIBED BEFORE ME THIS
22nd day of September 1988, AT Harrisburg, PA.

Special Agent
Bureau of Investigations
Department of the Auditor General

This oath is administered by virtue of the authority vested in me by Don Bailey, Auditor General, pursuant to the provisions of Section 517 of the Act of April 9, 1929, P. L. 177, as amended.

WITNESS STATEMENT

I, Donald Ruggerio, have been informed by Jim McAneny and Nick J. Ficco, Jr. who stated are Chief Counsel and Bureau Director with the Bureau of Investigations, Auditor General's Department, Commonwealth of Pennsylvania, and that he is conducting an investigation of alleged job selling.

MCANENY: Today is Thursday, October the 6th, the time is 1:36 p.m. My name is James McAneny, I'm Chief Counsel in the Department of the Auditor General, with me is Nick Ficco, Director of the Bureau of Investigations, and Donald Ruggerio, an employee of the department, who I might add for the record is currently out on workmen's compensation but agreed to come in voluntarily for the purposes of this interview. Mr. Ruggerio, so that you understand why we asked you to come in, the auditor general has received certain information from the United States Attorney's Office concerning alleged misconduct during the Benedict administration. In specific, we're going back to the job selling scandal stuff. The purpose of our investigation is not criminal in nature. It is to determine whether or not sufficient evidence exists to warrant any form of disciplinary action at this time for the actions alleged to have occurred in the past. The nature of our examination, although just administrative, could, however, disclose evidence of criminal misconduct, which if we should discover, we will turn over to the appropriate authorities. Because of that possible risk, you would have a right to have counsel present at this meeting, if you so desire, or if you wish, we could proceed with the interview, but at any point you decide that you want to stop it because you want to consult with counsel, we'll terminate at that point, and give you a chance to get a lawyer and come back in at a later date. Do you understand this?

RUGGERIO: Sure.

MCANENY: Do you want to proceed now?

RUGGERIO: Sure.

MCANENY: Okay.

FICCO: Please raise your right hand. Do you swear that the testimony you are about to give here is true and correct to the best of your knowledge and belief?

RUGGERIO: I do.

FICCO: Please state your full name.

RUGGERIO: My name is Donald D. Ruggerio.

MCANENY: Okay, Mr. Ruggerio, when did you first start working for the Department of the Auditor General?

RUGGERIO: February 14, 1977.

MCANENY: Was that during Mr. Benedict's first term?

RUGGERIO: Yes.

MCANENY: What do you recall of the circumstances surrounding your original employment?

RUGGERIO: I was laid-off from PennDOT for almost a year, and I ran into, I belong to Unical; which is an Italian service organization, and I've done a lot of charity work with the Scranton District; and I happened to be up there for dinner. It must have been back in October of '76, and Mr. Benedict and Mr. Biggica was up there, and I approached them, and I said, "I was looking for employment." And he said, "Well, come down and get an application, fill it out, and we'll see what happens." I told him I was laid-off from PennDOT, at that time; Montoursville Office.

MCANENY: Okay then, so you filled out an application and what happened after that?

RUGGERIO: I didn't hear anything for about six weeks, and then I think after the first of the year, after maybe the 20th, January 20th, somebody gave me a ring and said come on down for an interview.

MCANENY: So you came down for an interview?

RUGGERIO: Yes.

MCANENY: Who did you interview with? Do you recall?

RUGGERIO: I think it was the Personnel Director.

MCANENY: Who would it have been, Mr. Biggica?

RUGGERIO: No, no, he had a man under him that interviewed me, I think. It's a long time ago, it's over, almost 12 years ago.

MCANENY: Yeah it has been awhile.

RUGGERIO: It was a — it was a gentleman underneath that I think interviewed me, not Mr. Biggica.

MCANENY: Would it have been Eric Slater?

RUGGERIO: I think that was the person, yes. I'm not positive, but I think that's who.

MCANENY: After your interview, what happened then?

RUGGERIO: Well then they said they would let me know, and I guess they called or sent me a letter in the mail to report.

MCANENY: Was there a substantial lapse of time between the interview and the letter saying you were hired, or was it just a couple weeks?

RUGGERIO: It had to be between January 20, and right after the inauguration then, and February 14th.

MCANENY: Had you been an active supporter of Mr. Benedict in his campaign?

RUGGERIO: No, I didn't meet Mr. Benedict until like, like I told you, October of '76, at this Unical with, I'm trying to think of some people that were there. It was National President Al Donte invited me up. You know, it was one of those interchange. You go to another chapter. I knew nothing about the Auditor General's Department up to that time.

MCANENY: What county were you from?

RUGGERIO: Columbia.

MCANENY: Columbia.

RUGGERIO: Uhum.

MCANENY: Did you know Richard Walton?

RUGGERIO: Dick Walton was the county chairman, I think, at that time. I think he signed my application.

MCANENY: Did you talk to him about signing your application?

RUGGERIO: Well, that's after I talked to Mr. Benedict and Mr. Biggica up at the Unical. I come back and told Mr. Walton that they were interested in me and that I was supposed to submit an application; if he would sign the application for me.

MCANENY: What did Mr. Walton do for a living, do you know?

RUGGERIO: Mr. Walton works here.

MCANENY: He works here, he's with the department?

RUGGERIO: He's a supervisor, yes.

MCANENY: And did Mr. Walton discuss any financial contributions with you?

RUGGERIO: No.

MCANENY: Did Mr. Benedict, or Mr. Biggica, or anyone else suggest that you should make a contribution to Mr. Benedict's campaign?

RUGGERIO: No.

MCANENY: Did you ever deliver any money to Mr. Walton for any reason?

RUGGERIO: We sold tickets for a fund raiser.

MCANENY: When was that?

RUGGERIO: Here you go, you're going way back again. It had to be 1980. It must have been 1980 we sold them. I think we had a party for him.

MCANENY: That was up . . .

RUGGERIO: Yeah at the . . .

MCANENY: Up in Columbia County?

RUGGERIO: Yeah.?

MCANENY: Did Mr. Walton handle the organization of the affair?

RUGGERIO: Yeah, I would say yeah.

MCANENY: Alright, he's the one that you returned your ticket stubs and money to?

RUGGERIO: Money to, right.

MCANENY: Did you ever make a \$1,000 contribution to Mr. Benedict's campaign?

RUGGERIO: Never. I belonged to, I think in '82, I belonged to the Century Club; not Century Club, what did they call it, 500 Club.

MCANENY: 500 Club.

RUGGERIO: Yeah, and that was on a voluntary basis I gave that. I give a lot of money to my political party, not only to Mr. Benedict, or any other.

MCANENY: Did you make a contribution to Mr. Benedict's inauguration, back in 1977?

RUGGERIO: No.

MCANENY: Have you ever been questioned about these matters before, by any authority?

RUGGERIO: No, no.

MCANENY: Not by the Attorney General's Office?

RUGGERIO: Oh wait a minute. Somebody stopped, after the accident, I think somebody stopped at the hospital. Two

guys double-teamed me, and I told him I didn't know anything about it. I then exactly what I'm telling you.

MCANENY: This is in the hospital?

RUGGERIO: Yes . . .

MCANENY: When was this?

RUGGERIO: In fact I'll tell you the two gentlemen, they were from Scranton. I don't know, his brother was an attorney up there. I just can't think of his name right now. It was him and his supervisor.

MCANENY: What agency did they belong to?

RUGGERIO: Attorney General, that's what you said.

MCANENY: Attorney General's Office?

RUGGERIO: Yeah, yeah.

MCANENY: Was this back when they were first investigating John Kerr before he was indicted?

RUGGERIO: I think, yeah.

MCANENY: When was your accident?

RUGGERIO: '83.

MCANENY: '83, and John was indicted in November of '83. So it would be earlier in the year?

RUGGERIO: It had to be.

MCANENY: Okay. Well, you'd know when your accident was, and you'd know when you were in the hospital.

RUGGERIO: Yeah, no, it was November 16th of 1983, when I had my accident.

MCANENY: November 16, 1983.

RUGGERIO: 1983, yeah.

MCANENY: And two gentlemen from the Attorney General's Office came in to talk to you?

RUGGERIO: That's right. It must have been either '83, or '84; but I was in the hospital in '83 though, so it was '83.

MCANENY: Do you recall what they asked you about?

RUGGERIO: About the same line of questioning you're talking about; about giving — paying for a job, and stuff like that, and I said, no way.

MCANENY: Have you ever been questioned by anyone else?

RUGGERIO: No.

MCANENY: Since then?

RUGGERIO: No.

MCANENY: No one from the Department of the Auditor General's Investigation bureau back around that same time?

RUGGERIO: Never.

MCANENY: No one from the U.S. Attorney's Office?

RUGGERIO: Never.

MCANENY: Or the FBI?

RUGGERIO: Never. The FBI called me once on a job reference for some young man. I worked . . .

MCANENY: Alright, totally unrelated to this; they didn't ask you any questions about this?

RUGGERIO: No, see I used to work for the government before; Federal Government.

MCANENY: What was your position?

RUGGERIO: I was with the CIA at the time. I was a security officer for the CIA.

MCANENY: Okay, I have no other questions. Do you have anything Nick?

FICCO: Yes. From 1977 when you were hired?

RUGGERIO: Uhum.

FICCO: Until 1980, when you related to the fund raiser you worked, or participated in, in three years?

RUGGERIO: The had had, they had so many parties Nick, I can't remember which ones that I was involved. It must have been a couple, it had to be a couple parties. You know what I mean?

FICCO: Uhum.

RUGGERIO: Over the years, it's just it's hard to remember. I've been to so many darn parties.

FICCO: Yeah. Why does 1980 stick out in your mind?

RUGGERIO: I don't know why, I just — I think it was three years after we were working that we had a party for him up there. It might have been '82, I don't know, '80 or '82. But I know I was involved with one party. That was me, Dick Cashman, and Dick Waltman.

FICCO: How many other times did you give Nick money?

RUGGERIO: No I turned the money into, just like when we had the party for, we had a party for Don up there, I turned the money right into the people, to Cashman, and he turned it

right over to Mowry; and also in Bloomsburg, the same thing, when they had a party at the Elks in Bloomsburg; just turned it right over.

FICCO: How did you pay the 500 Club?

RUGGERIO: How?

FICCO: Was it cash or did you pay him by check?

RUGGERIO: No, I wrote a check.

FICCO: You wrote a check?

RUGGERIO: I'm almost sure I did, yeah. I might buy a \$25 ticket cash, but I never . . .

FICCO: Yeah.

RUGGERIO: Anything two, three hundred dollars, I have checks for.

FICCO: Was there any check you ever gave to Benedict?

RUGGERIO: I think so, to pay the 500 Club. I don't think I gave him any money up until that time; except like I said, \$25 or \$50 tickets some place, and some other county had a party.

FICCO: I think that's all I had.

MCANENY: Is that the area where they used to have the golf outing?

RUGGERIO: I wasn't to that one. Were you up there to that?

MCANENY: No. All I remember is that there used to be a golf outing there.

RUGGERIO: They had a party, I think they had a party in October, I think, that time, but I wasn't there." Like I said, I didn't meet — I met him later on after they had that party for him. I wasn't even there, or I didn't donate anything to that party either.

FICCO: I think Biggica.

MCANENY: I don't know who it was. All I remember is that there used to be a golf outing.

FICCO: I do realize that people came out with Russ Biggica and John Clark.

RUGGERIO: How long have you been working here? I don't . . .

FICCO: I started in '80.

RUGGERIO: '80.

MCANENY: Okay, well, Mr. Ruggerio I want to thank you for coming in, especially considering that you are on worker's comp. I want you to be aware of the fact that, I'm sure you are aware from newspapers and press coverage, that the issue of 20 names provided by the U.S. Attorney's Office to this department has become a political football for the auditor general's opponent, and I want you to be assured that Don Bailey has not intention of disclosing the names of people simply because of an accusation where there's no evidence of any wrongdoing on their part. All that would serve is to link innocent people up with accusations, and ruin your reputation, or at least damage it severely.

RUGGERIO: I'm 100 percent behind Don.

MCANENY: Now, to the same extent, I want you to understand that this entire interview, everything we've discussed is to be held in absolute confidence. You can discuss it with appropriate authorities, if they ever ask you about it; the attorney general, or whoever, or you can talk about it with your private legal counsel. Other than that, I don't want you talking about it with anyone.

RUGGERIO: Not even say anything to Dick.

MCANENY: And this is under specific instructions of the auditor general.

RUGGERIO: Don't say anything even to Dick?

MCANENY: Right.

RUGGERIO: Okay, because he was involved with it.

MCANENY: Don't want anybody talking to anybody about it. All that's going to do is increase the likelihood of a rumor starting that says, that this individual's one of the people. We don't need that, you don't need that.

RUGGERIO: No I don't.

MCANENY: And where there's no evidence of any wrongdoing on anyone's part, no basis for any kind of disciplinary action for us to take, there's certainly no reason why we would want the names released. Don, of course, from a political point of view, would probably find it easier to release the names, but from a fairness point of view, it's not right, and he's made the decision not to do that. You should be aware that he will consider the most severe discipline he can come up for breach of

this confidence, and that's for your protection, and every other person that's called in to talk to us in this matter, has been given the same warning.

RUGGERIO: You have 100 percent guarantee from me. I won't mention it from this table.

MCANENY: Alright, I appreciate that, and I guess we can finish.

— END OF STATEMENT —

AFFIDAVIT

I, _____
(have had read to me) (have read) this statement which begins on page (1) and ends on page 10. I fully understand the contents of the entire statement made by me. This statement is true. I have initialed all corrections and have initialed the bottom of each page containing statement matter. This statement has been made by me freely without hope of benefit or reward, without threat of punishment, and without coercion, unlawful influence, or unlawful inducement.

(Signature of Person Making Statement)

SWORN TO AND SUBSCRIBED BEFORE ME THIS 6th day of October 1988, AT Harrisburg, PA.

Special Agent
Bureau of Investigations
Department of the Auditor General

This oath is administered by virtue of the authority vested in me by Don Bailey, Auditor General, pursuant to the provisions of Section 517 of the Act of April 9, 1929, P. L. 177, as amended.

WITNESS STATEMENT

I, James Dicosimo, have been informed by Jim McAneny and Nick J. Ficco, Jr. who stated are Chief Counsel and Bureau Director with the Bureau of Investigations, Auditor General's Department, Commonwealth of Pennsylvania, and that he is conducting an investigation of alleged job selling.

MCANENY: Today is October 3, 1988, the time is 2:34 p.m. 3:34 p.m., it's been one of those days. Alright, my name is James McAneny, I'm Chief Counsel in the Department of the Auditor General, with me is Nick Ficco, Director of the Bureau of Investigations, and James Dicosimo, who is an employee of the department. Mr. Dicosimo, the reason you've been asked to come in here is because we're conducting an internal investigation of certain allegations what we have received from the U.S. Attorney's Office. Those allegations are that certain employees, current employees of the department engaged in some form of wrongdoing under the Benedict Administration, primarily relating to the job selling scheme. The purpose of our investigation is not criminal. We do not do criminal investigations. It is to determine if at this point in time evidence exists which would justify the position of some form of discipline or other administrative remedy. However, because of the nature of the accusations, and the possibility that evidence of criminal misconduct could arise from this investigation. You should be aware that, for the purpose of this interview, you do have a right to have counsel present, if you would so desire. If you wish, we could suspend the interview right at this point, you'll have an opportunity to contact your counsel, set up a future date when he can be present. Alternatively, we could proceed at this point, but if at any time during the interview, if you wish to, you can just stop it. It won't hurt your detriment, you won't be prejudiced by it.

DICOSIMO: Okay.

MCANENY: We'll terminate the interview, at that point, seek legal counsel, reconvene at a date when he can be present. Do you understand that?

DICOSIMO: Yep.

MCANENY: Do you wish to proceed?

DICOSIMO: Proceed.

MCANENY: I will ask you to try to speak up for the mike.

DICOSIMO: Okay.

MCANENY: Thank you.

FICCO: Please raise your right hand. Do you swear that the testimony you're about to give here today is true and correct to the best of your knowledge and belief?

DICOSIMO: I do.

FICCO: Please state your full name for the record?

DICOSIMO: My name is James Dicosimo.

MCANENY: Mr. Dicosimo, I'm going to have a heck of a time saying it. I got to hit the "s" in the first syllable too, don't I? DiScosimo.

DICOSIMO: No, it's actually Dicosimo is the right pronunciation.

MCANENY: Dicosimo.

DICOSIMO: That's exactly right.

MCANENY: I'll work at it.

DICOSIMO: That's correct; however, people call me Dicosimo, who we go by that. That's the easy way, it's the American way of doing it, saying, it. But we know it's Dicosimo, okay.

MCANENY: Whatever. Sitting over here, the lone Nick in the room. We have that straighten out. When did you start working for the Department of the Auditor General?

DICOSIMO: January 14, 1980.

MCANENY: And in what capacity were you hired?

DICOSIMO: As a field auditor 3.

MCANENY: Did you believe at that time that it was unusual that you would be hired as a three level instead of as a one?

DICOSIMO: No, No. I had worked at the Atlantic City Tea Company, and I had a — then I served as a county commissioner back home, and I had the credentials for this particular job. I had worked at Personnel for the United States Army for two years for this particular job. I mean I had worked at Personnel in the United States Army for two years.

MCANENY: What job were you given, what bureau were you hired to?

DICOSIMO: County Bureau of Audits.

MCANENY: Bureau of County Audits?

DICOSIMO: Uhum. Bureau of County Audits, yeah.

MCANENY: Okay. The fact that you had background as a county commissioner I'm sure was an assistance.

DICOSIMO: I would think so, eight million dollar budget annually.

MCANENY: How did you get that job?

DICOSIMO: How did I get that job?

MCANENY: Uhum.

DICOSIMO: Well, during the particular time, I've always been involved politically through the years. I served on the Executive Board of the Democratic Party, even during the term of Bob Casey, when he was auditor general, and Guido and I have been very close friends, and have been.

MCANENY: Guido?

DICOSIMO: Alesi, and we've been very close friends, and served on the Executive Board when he was county chairman. And through the years we have worked hard politically of all these particular years; and during that course of time that we had done a county wide reassessment, I had served three terms of county commissioner, I had told him that I had the opportunity in our union contract to go back with A&P. As a matter of fact, I served on the union negotiation team, negotiated what's in the contract, that any employee that was elected to public office, would be given a bonafide leave of absence to coincide with his term of office, and go back to A&P whatever time I chose. However, at that time, I was defeated in the election. We had done a county wide reassessment, and lost by 45 votes. And I filled out an application to work, Guido got me the application to work in the auditor general's department, and I chose to do that. I could have gone back, as I said, with A&P.

MCANENY: Did you make any financial contributions about the time of the, in fact specifically, did you ever give \$1,000 in cash?

DICOSIMO: No way.

MCANENY: To Mr. Alesi, or to Mr. Kerr, or Mr. Benedict?

DICOSIMO: No way, no way.

MCANENY: Did you make any other contribution about the time that you were given the job?

DICOSIMO: I made a — I joined the 500 Club, which I, by the way I still have my, I keep my records of all my checks; and as a matter of fact, I've carried them in my possession if you wish to see them.

MCANENY: . . . no, no, no.

DICOSIMO: Alright, I donated \$500 to the Al Benedict 500 Club, I donated \$250 to the Democratic State Committee, and think there was another hundred and some dollars during that particular year, I gave in a check. I always gave my contributions by check, by the way.

MCANENY: I feel like I'm wasting my time here. I know that I'm wasting my time. Mr. Dicosimo, did you tell me that you actually brought the checks with you today?

DICOSIMO: I always carry them in my possession, I've had them, I carry them in my wallet. After I went through for the last eight or nine years. I've carried them and they've turned color, believe me.

FICCO: Is that right.

DICOSIMO: Yes I have.

MCANENY: Tell me about what you went through in the last eight or nine years? Have you been questioned about this before?

DICOSIMO: Yes, I was before the State Grand Jury. It's getting to be a — it's getting to the point that it becomes harassment after a while.

MCANENY: I understand that.

DICOSIMO: And I've always carried them. I was before the State Grand Jury, and I told him the same thing I'm telling you; and you know, you get sick and tired of it eventually.

MCANENY: That was Grand Jury that was conducted by James West as the assistant district attorney?

DICOSIMO: No, I went before the State Grand Jury that was conducted by Claus.

MCANENY: Lawrence Claus?

DICOSIMO: That's right. Leroy Zimmerman's attorney general.

MCANENY: That was late in the proceeding then.

DICOSIMO: That was in — back in 1983.

MCANENY: Okay.

DICOSIMO: 1983.

MCANENY: Did you testify at the trial as well?

DICOSIMO: At the trial?

MCANENY: At John Kerr's trial?

DICOSIMO: No, no. I just was there as a witness before the Grand Jury, and I told them the same thing that I'm telling you today. Everything I've told you today I told them; so there's nothing any different.

MCANENY: Okay, do you have anything Nick?

FICCO: No sir.

MCANENY: I don't have anything either, nope.

DICOSIMO: Okay.

MCANENY: There's something I have to add, however.

DICOSIMO: Okay.

MCANENY: Oh, have you ever been questioned by anybody since then about this matter?

DICOSIMO: By? No, no.

MCANENY: Alright, so the FBI hasn't come to talk to you?

DICOSIMO: No.

MCANENY: The U.S. Attorney's Office hasn't come to talk to you?

DICOSIMO: No, no.

MCANENY: Have you've discussed it with Mr. Alesi?

DICOSIMO: Not in detail or anything like that, no. There was nothing there that we discussed.

MCANENY: Alright. I am done. I have one warning to give, please allow me to do so.

DICOSIMO: Okay.

MCANENY: The auditor general has instructed Nick and I to personally handle this investigation; no one else is involved in it. We are keeping the lid on, so to speak. As I'm sure you're aware, Mr. Bailey's political opponent is making a lot of noise about demands for public disclosure of the list of 20 names provided by James West. The auditor general has no intention of providing any list of names to Mrs. Hafer or to the public where the evidence would indicate that all you're doing is identifying persons accused, but you did nothing wrong. All that can

possible do is damage the reputation of those employees without any basis. In that same regard, we have been instructed to tell everyone that comes in at this interview, the matter of the entire investigation, must remain strictly confidential. You were brought in by the Personnel Office, you were brought in by the Personnel Office, period. You do not say who you saw in this building today, you do not discuss the nature of our meeting, and the one thing that will result in disciplinary action would be the disclosure of information, other than to your private counsel, or if you're contacted by the U.S. Attorney, or the Attorney General, or somebody like that and four more years you got to do this over again, do you understand that?

DICOSIMO: Yeah.

MCANENY: Do you agree to it?

DICOSIMO: Yeah.

MCANENY: Okay, we're done.

— END OF STATEMENT —

AFFIDAVIT

I, _____
(have had read to me) (have read) this statement which begins on page (1) and ends on page 7. I fully understand the contents of the entire statement made by me. This statement is true. I have initialed all corrections and have initialed the bottom of each page containing statement matter. This statement has been made by me freely without hope of benefit or reward, without threat of punishment, and without coercion, unlawful influence, or unlawful inducement.

(Signature of Person Making Statement)

SWORN TO AND SUBSCRIBED BEFORE ME THIS 3rd
day of October 1988, AT Harrisburg, PA.

Special Agent
Bureau of Investigations
Department of the Auditor General

This oath is administered by virtue of the authority vested
in me by Don Bailey, Auditor General, pursuant to the provi-
sions of Section 517 of the Act of April 9, 1929, P. L. 177, as
amended.

WITNESS STATEMENT

I, Louis Jurik, have been informed by Jim McAneny and Nick J. Ficco, Jr. who stated are Chief Counsel and Bureau Director with the Bureau of Investigations, Auditor General's Department, Commonwealth of Pennsylvania, and that he is conducting an investigation of alleged job selling.

MCANENY: Today is Friday, October 14, 1988, the time is 2:47 p.m. My name is James McAneny, I'm Chief Counsel in the Department of the Auditor General, with me is Nick Ficco, Director of the Bureau of Investigations, and Louis Jurik, a Field Auditor 3, in the Bureau of School Audits. Louise, the reason we've asked you to come in is because our department has been provided with certain information from the United States Attorney's Office, contained to primarily their allegations of possible misconduct under the Benedict administration. We, Nick and I have been assigned to interview people with regard to these allegations, and the purpose of our investigation is to determine if there is any disciplinary or other type of administrative action should be taken by the department. The nature of the allegations, however, are such that it is possible that evidence of criminal wrongdoing could be disclosed as a result of our investigation; and because of that possibility, we've advised everyone that they have a right to have counsel be present for any interview. That right can be asserted now, before we begin, or if you would prefer, we can begin questioning, and if at any point you decide that you want to stop until after you have a chance to consult with counsel, we can do it at that point, and you have a chance to go out and get a lawyer, and have them be present for any continuation.

JURIK: Are we talking about the job selling?

MCANENY: Yes, basically that's the — that is the type of allegations.

JURIK: To what extent?

MCANENY: Not greatly.

JURIK: To me?

MCANENY: Primarily there is an allegation of some possible payment involving a promotion you may have received. I don't know what promotion they're referring to, and I don't have

dates, as to the allegation that we have received doesn't provide a lot of specifics.

JURIK: The only promotion I've received is when I became a Field Auditor 3, is this what we're talking about?

MCANENY: I guess it must be.

JURIK: Well, I can assure you there was no payment.

MCANENY: I understand that. Do you want to proceed with the statement at this point.

JURIK: I can.

MCANENY: And if you change your mind, we'll stop.

JURIK: I understood that my three was based, it was a meritorious increase, and it was due to the Clarion School District audit, that I think you worked with Jim.

MCANENY: Yes.

JURIK: And the McKeesport School District Audit.

MCANENY: Okay.

JURIK: And at that time, and I think there were probably letters I received, and they may in my personnel file, letters of commendation, for those two particular audits, from Mr. Benedict.

MCANENY: Let me ask you a specific question. Did you know a gentleman named John Lignelli?

JURIK: Yes I did.

MCANENY: And what was your relationship with John?

JURIK: Not good. John Legnelli and I don't even speak. As a matter of fact, during Don Bailey's election, when he ran for election for Senator, okay; he and I really got into it. I don't know how else to describe it; and I went to the council meeting, and I asked him, at that time, to resign because of some statements he made at my house. He came down onto my porch.

MCANENY: What council meeting was that?

JURIK: I have a letter from Mr. Bailey. Let me just show it to you. Where he, I'm sure that is what it is referring to in this letter where he thanked me. I think this is it.

MCANENY: Okay, for the record, this is a letter on stationery of Pennsylvanians for Bailey, signed by Don Bailey, it's dated July 28, 1986, and it's addressed to Louise Jurik, and it states, "I want to say thank you with all my heart for supporting my candidacy for the United States Senate. Dorothy

Smyde told me of the tremendous help given during the campaign and I'm sincerely and deeply grateful. The enthusiasm and spirit of assistance like yours is our core inspiration. Above all, the campaign was run in a way that can make us all proud. Once more, and always Louise, my most heartfelt gratitude. Sincerely yours, Don Bailey."

JURIK: And I assume that this was the answer that he referred to in the letter.

MCANENY: When you referred to the council . . .

JURIK: I'm sure I have a newspaper article at home.

MCANENY: What council is that?

JURIK: It's a local council; the Borough of Donora. John Lignelli sits on the council.

MCANENY: Okay, it's Borough Council itself.

JURIK: Right.

MCANENY: Okay, are you a council member?

JURIK: No I'm not, but I asked for permission to speak at that particular council meeting.

MCANENY: On behalf of?

JURIK: Well I felt that . . .

MCANENY: Mr. Bailey's candidacy?

JURIK: No, no. John was putting literature up for, who ran against Mr. Bailey, Edgar?

FICCO: Edgar, Bob Edgar.

JURIK: . . . on the utility poles, and I tore them down, and I called the utility company to see whether this was against the law to litter their poles. So when he found out what I had done, he came down to my house that afternoon, this was primary election day, and he said to me that he was sick and tired of me, and I was getting to be, I'm going to tell you what he said, a real pain in the you know what; and we had a few other choice words, and he left. So the next council meeting I requested to speak; and I said at any time he thought he could come down onto my front porch and use that kind of language to me . . .

MCANENY: But to go back to the Benedict administration, briefly.

JURIK: Okay.

MCANENY: We just want to get this wrapped up as quickly as we can.

JURIK: That's quite alright.

MCANENY: Back in 1983 or I guess maybe even 1982, was Mr. Lignelli involved, to your knowledge, in fund raising for Mr. Benedict or Mr. Benedict's campaign?

JURIK: I don't know whether he was involved with fund raising. I know that he had tickets for the affairs, okay.

MCANENY: To your recollection, did you ever deliver any money to Mr. Lignelli for any of Mr. Benedict's campaigns?

JURIK: I purchased my tickets through George Spatana, who was our regional supervisor at that time. I did not deliver — we weren't on that good terms for me to do something like that.

MCANENY: So you basically just didn't deal with Mr. Lignelli?

JURIK: No I didn't. The only time I dealt with Mr. Lignelli is if I had a problem with my car. He was the automotive officer, okay.

MCANENY: Okay.

JURIK: And that is the only time.

MCANENY: And to be specific, did you ever give John Lignelli \$1,000 to convey to John Kerr for the purpose of obtaining a promotion?

JURIK: Absolutely not.

MCANENY: Have you ever been questioned by anybody else regarding this kind of thing?

JURIK: No. I have never been questioned by the attorney — I knew that there were people that were being called in, but I had never been questioned.

MCANENY: You were never questioned by the attorney general?

JURIK: This is why I was amazed. No.

MCANENY: You weren't questioned by the auditor general when they did the investigation back . . .

JURIK: I wasn't questioned by anyone. This is the first time.

FICCO: I never recollect her name ever coming up.

JURIK: This is the first time this ever came up.

MCANENY: You've never been questioned by the FBI or the U.S. Attorney?

JURIK: No one. This is why I couldn't understand why I was coming in today; especially to investigation. I knew job selling people were coming in because there were a couple that were called in that I know. But when I got called in, I thought, this certainly can't be for that.

MCANENY: Nick do you have any questions.

FICCO: No.

MCANENY: Alright Louise, I really want to thank you for coming in. I realize this pretty well blew a perfectly good Friday, but it's something that we had to do.

JURIK: Oh I understand that. I'm glad if there was a question, I'm glad to come in.

MCANENY: We're just trying to get the thing resolved.

JURIK: Let me ask you a question now.

MCANENY: Sure.

JURIK: Was my name supposedly on that list that those 20 employees, that we had heard about or read about in the newspaper? Because if it was, Jim, this was the first time.

MCANENY: Well, I understand that. You read about the list of the 20 names in the newspapers, sure.

JURIK: Yeah, it's in the local papers, yeah.

MCANENY: Everybody, I think, had heard about that, and I assume you've also heard that Mr. Bailey's opponent has called for the disclosure of the 20 names.

JURIK: Yes, I have read that.

MCANENY: What I would like you to understand is that Mr. Bailey has no intention of disclosing the names, and in support of that, we've been instructed to advise you, as we've advised everyone else we've talked to, that the nature of this meeting is to be kept confidential.

JURIK: Okay.

MCANENY: You can discuss it with a private lawyer, and you can discuss it with — these are the people you can talk to, okay.

JURIK: Okay.

MCANENY: It's alright to talk about it with your lawyer, it's alright to talk to an investigating agency, if the ever ask you about it. But other than that, it's best that you don't discuss it with anyone. We're trying to keep the rumors down to a

minimum. We don't think that it's proper to have people defamed simply because they've been accused of something when there is no evidence to support the accusation, alright. We are completing our investigation, and it will be handled appropriately, but without release of names. I want you to understand that.

JURIK: Okay.

MCANENY: The auditor general will use any disciplinary action that is within his power to anyone that breeches the confidentiality of these meetings.

JURIK: Okay.

MCANENY: And you should be aware of that. I mean, we are not looking to have this thing be turned into a political football, in spite of the way it's been treated by the other side.

JURIK: I would just like to know who my accuser is, really. If it's John Lignelli, then I think he's being very vindictive.

MCANENY: I understand how you feel. I don't — we don't really have a firm identity of an accuser, unfortunately, with the nature of the information that has been provided to us. So I can't say that it is Mr. Lignelli, or who it is. It's simply certain bare bones allegations that have been provided to us by the United States Attorney's Office for our investigation, and this meeting is designed to resolve those accusations.

JURIK: Well, I want to say one other thing, Jim. When we were working during that time, I was hired under Bob Casey. During Mr. Benedict's term as auditor general, when we were working, I think, and I can say this, I think for some of the older people, employees, you can almost pick out those persons. Understand what I'm saying?

MCANENY: Yeah.

JURIK: And that was common knowledge, and I was never, you know. This is what I don't understand; how my name got on that list.

FICCO: Stranger things have happened.

JURIK: I know when you, when an auditor.

MCANENY: Well, there are some very strange names on the list, don't worry about it.

JURIK: Okay, well then I feel better that I'm not alone in this, okay.

MCANENY: Thank you then.

JURIK: That's quite alright.

— END OF STATEMENT —

AFFIDAVIT

I, _____
(have had read to me) (have read) this statement which begins on page (1) and ends on page 7. I fully understand the contents of the entire statement made by me. This statement is true. I have initialed all corrections and have initialed the bottom of each page containing statement matter. This statement has been made by me freely without hope of benefit or reward, without threat of punishment, and without coercion, unlawful influence, or unlawful inducement.

(Signature of Person Making Statement)

SWORN TO AND SUBSCRIBED BEFORE ME THIS
14th day of October 1988, AT Harrisburg, PA.

Special Agent
Bureau of Investigations
Department of the Auditor General

This oath is administered by virtue of the authority vested in me by Don Bailey, Auditor General, pursuant to the provisions of Section 517 of the Act of April 9, 1929, P. L. 177, as amended.

WITNESS STATEMENT

I Karol Danowitz, have been informed by Jim McAneny and Nick J. Ficco, Jr. who stated are Chief Counsel & Bureau Director with the Bureau of Investigations, Auditor General's Department, Commonwealth of Pennsylvania, and that he is conducting an investigation of alleged job selling.

MCANENY: Alright, today is Thursday, October 6, 1988, the time is 1:22 p.m. My name is James McAneny, I'm Chief Counsel with the Auditor General's Department, with me is Nick Ficco, Director of the Bureau of Investigations, and Karol Danowitz, an employe of the department. Karol, the reason we asked you to come is because we are conducting an internal review of various allegations that our department has received from the U.S. Attorney's Office concerning representations of misconduct under the Benedict Administration. The purpose of our investigation is to determine if any disciplinary action could be warranted at this time; but you should be aware that the nature of the allegations that have been transferred to us or transmitted to us, could, if proven, possibly be deemed to be criminal acts, and that if we, and of course, if our investigation would uncover any evidence that should indicate criminal responsibility by any person, we would be required to report that information to the appropriate authorities.

DANOWITZ: What is this in reference to, specifically?

MCANENY: Specifically this is in reference to allegations regarding the job selling scandal that occurred under the Benedict administration.

DANOWITZ: I was questioned by the FBI.

MCANENY: I understand that, but before we proceed any further, just let me finish with this introduction so you understand where we are coming from.

DANOWITZ: Alright.

MCANENY: You would, at this time, have a right to have counsel present, if you desire, for this interview. Our interview is not criminal in nature; it's just administrative. But, if you would wish to proceed at this point, with any type of statement, we would allow you to interrupt at any time and have counsel be present in the future. I can tell you that the information that we

have at this point does not indicate that you are criminally responsible in any way, but your name was given to us, along with a number of others, and we are required to at least investigate the matter to see if there is anything from an administrative point of view that should be done. Now my question would be, do you wish to proceed at this point, or do you want to stop and have counsel be present for the future.

DANOWITZ: No, at this point I don't see there's any reason to stop.

MCANENY: Okay, Nick if you would administer the oath.

FICCO: Raise your right hand Karol.

DANOWITZ: Uhum.

FICCO: Do you swear that the testimony you are about to give us this day is true and correct to the best of your ability and knowledge?

DANOWITZ: Absolutely.

FICCO: Please state your full name for the record?

DANOWITZ: Karol S. Danowitz.

MCANENY: Alright Karol, I'm sure, as you mentioned, you've been questioned about this before, and I would imagine that this is exactly the same things you were questioned about in the past. Basically, the information deals with your original employment in the Department of the Auditor General. Could you describe for us, briefly, what you know of the circumstances under which you were hired?

DANOWITZ: Okay, let's see, my husband, at one point, worked with Joe Thor; I think in the same accounting firm, and to the best of my knowledge, he approached Joe Thor, was there a job in the Auditor General; and I went in, got an application, filled out applications, I took them back, and then I — I cannot remember if I was called in for an interview or not, okay.

MCANENY: Okay.

DANOWITZ: After a period of time, I was called and informed that I had a job with the Bureau of Typing and Duplicating.

MCANENY: Alright, did at any time, and here I should advise you that there is a statutory privilege concerning communications between husband and wife, okay; and I cannot ask

you to violate that privilege. Certainly you should have consultation of counsel regarding anything, but other than a communication from your husband to you, other than the discussion that your husband may have had to you, do you know of, or were you ever advised that any money had changed hands to obtain that job for you?

DANOWITZ: Absolutely not. As a matter of fact, I'll tell you this. After I was questioned by the FBI, we do not speak at all, but I called him and I told him, and I said point blank to him, I said, he had been questioned by the FBI too. I said, "Harvey, did you pay for my job?" And he said, "No I did not."

MCANENY: When were you questioned by the FBI.

DANOWITZ: Oh boy, maybe it was last fall.

MCANENY: And it was basically the same kind of questions?

DANOWITZ: Basically the same kind of questions. My ex-husband said he had been questioned twice.

MCANENY: He's your ex-husband; you're divorced?

DANOWITZ: Yes.

MCANENY: Were you divorced at that time, or you were still married?

DANOWITZ: We were still married, at the time I got the job. We were still married then. He had also told me that he works with Irving Amberbaum, he had been questioned.

MCANENY: Do you mean Harvey Amberbaum.

DANOWITZ: Whatever.

MCANENY: Former deputy auditor general?

DANOWITZ: Yeah that's the one, yeah, okay. He works with him, he works for the same accounting firm in Elizabethtown that he works for.

FICCO: What firm is that, Karol.

DANOWITZ: Oh that's a good question. I don't know. Felty and Company, maybe, something like that. Unless they changed the name, but that . . .

MCANENY: Have you ever been questioned by anyone other than the FBI?

DANOWITZ: No.

MCANENY: Were you asked to appear before the Grand Jury?

DANOWITZ: No, no. They came to my apartment and they questioned me there.

MCANENY: Okay, and you say that your husband said they had talked to him as well.

DANOWITZ: They had talked to him as well, and he said he did not.

MCANENY: Okay, Nick, do you have anything?

FICCO: No, that pretty much wraps it right there.

MCANENY: Alright Karol, I really want to thank you for coming in and cooperating like this. I would like to tell you that, I'm sure you've read the papers, or heard on the news that the auditor general's opponent in this election has called for the disclosure of names of people that were turned over to us by the United States Attorney's Office.

DANOWITZ: I don't think she has any right with those names.

MCANENY: That is also the opinion of the auditor general, so that you are aware of that.

DANOWITZ: I don't think she has any right to those, and I -- you know, she may never be elected auditor general.

MCANENY: Karol, what I want you to understand is that our position, and the position of the auditor general, is that only those persons who absolutely must know are aware of the names. That consist of the auditor general, Nick, and myself. At this point, we are, to my knowledge, the only ones that have access to the full list. The people that have been asked to come in, like yourself, we are instructed to tell all of you, other than discussion with appropriate legal authorities of the FBI or the Attorney General, or somebody wants to talk to you about this interview, of course, you tell them anything, you tell them the truth, tell them what happened here.

DANOWITZ: Yeah.

MCANENY: Other than that, if you want to discuss it with your private legal counsel, you're free to do that as well. With those exceptions, this is to stay confidential. We don't want . . .

DANOWITZ: And everybody is going to question me, because I made one mistake of telling somebody in my bureau that I was coming down here, and he made a joke of it, and he informed everybody in the bureau that I was coming down here.

MCANENY: That you were coming to this office, or that you were going to Personnel.

DANOWITZ: I was going to Personnel.

MCANENY: Going to Personnel is fine. That's the way we've had everybody brought in as to Personnel. It's a Personnel matter, okay. No one has been called in to Investigations to be interviewed. Everybody has been called into Personnel. Surprisingly enough, all kinds of people get called into Personnel everyday, so it's not that big a deal. But there is no way they should be able to identify the two. We want this to stay confidential.

DANOWITZ: What do I tell the people upstairs? Give me a quick tricky?

MCANENY: Just tell them you had to go down to Personnel for something. You don't have to tell them that you came to see us.

FICCO: Deputy Almasi wanted to talk to you about some personnel matters.

DANOWITZ: About how we — I got it, I got it, how we deal with the warrants when they come in.

MCANENY: Whatever, you don't have to have — you don't have to tell them about the real reason why, okay.

DANOWITZ: Okay, that's it.

MCANENY: We don't want rumors and names being banded around the Commonwealth; because just being attached to an accusation can cause you a lot of embarrassment and that, and I'll be quite honest with you, accusations at this point are all we have. We haven't found any real substances to . . .

DANOWITZ: Anybody.

MCANENY: Well, it's all like this, old stuff that they have fully investigated, and what they expect us to be able to do about it is beyond me. Because if your husband did something wrong, there's no way that we can take action against you for that. Even if he did, no, even if he did, I'm just saying, if they accuse, say your husband bought you a job, how can we discipline you for that if you're not aware of it and you're not a part to it; even if he did it, and I'm not saying he did it. But the problem is the accusation alone can cause you a lot of problems. We don't want the fact that you were talked to by us bandied about.

DANOWITZ: See also, this Felty & Company, this . . . he just started this, he was a CPA for Benedict.

FICCO: He was?

DANOWITZ: Wasn't he the one? He was the CPA for Benedict.

MCANENY: I believe so.

DANOWITZ: So you know, they could have, my job could have just been a political favor.

MCANENY: I seemed to remember that they used to do some of the accounting work for either his personal stuff or his campaign stuff.

DANOWITZ: I'm sure of it, yeah. See so I'm sure my getting this job was purely a political favor, so to speak.

MCANENY: Okay, Well we thank you.

— END OF STATEMENT —

AFFIDAVIT

I, _____
(have had read to me) (have read) this statement which begins on page (1) and ends on page 7. I fully understand the contents of the entire statement made by me. This statement is true. I have initialed all corrections and have initialed the bottom of each page containing statement matter. This statement has been made by me freely without hope of benefit or reward, without threat of punishment, and without coercion, unlawful influence, or unlawful inducement.

(Signature of Person Making Statement)

JA-168

SWORN TO AND SUBSCRIBED BEFORE ME THIS 6th
day of October 1988, AT Harrisburg, PA.

Special Agent
Bureau of Investigations
Department of the Auditor General

This oath is administered by virtue of the authority vested
in me by Don Bailey, Auditor General, pursuant to the provi-
sions of Section 517 of the Act of April 9, 1929, P. L. 177, as
amended.

JA-169

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES C. MELO, JR., et al.	:	
	Plaintiffs,	:
v.	:	CIVIL ACTION
	:	NO. 89-2935
BARBARA HAER	:	
and	:	
JAMES J. WEST, ESQUIRE	:	
	Defendants.	:
	:	
	:	CIVIL ACTION
CARL GURLEY, et al.	:	NO. 89-2685
	Plaintiffs,	:
v.	:	
	:	
BARBARA HAER	:	
	Defendant.	:

DECLARATION OF BARBARA B. CHRISTIANSON

I, Barbara B. Christianson, hereby declare under the
penalties of perjury to 28 U.S.C. § 1746 that the following is
true to the best of my information, knowledge and belief:

1. Since January 17, 1989, I have been personnel director
for the Office of Auditor General of the Commonwealth of
Pennsylvania, I am submitting this declaration in support of
defendant Barbara Haer's motion for summary judgment in
James C. Melo, Jr., et al v. Barbara Haer and James J. West,
C.A. No. 89-2935, currently pending in the United States
District Court for the Eastern District of Pennsylvania and *Carl
Gurley, et al v. Barbara Haer* Civil Action No. 89-2685, also
pending in the United States District Court for the Eastern
District of Pennsylvania. Statements contained in this declara-
tion are all made on the basis of my own knowledge.

2. As personnel director for the office of Auditor General, I
am the custodian of the records of all personnel files and records.
As such, I am personally familiar with the authenticity of those
records and verify that the following statements are true and
correct based upon my personal review of the records of the
following persons on file at the Office of Auditor General:

- (1) James C. Melo, Jr.;
- (2) James DiCosimo;
- (3) Karol Danowitz;
- (4) Louise Jurik;
- (5) Donald Ruggerio;
- (6) John Weikel;
- (7) Walter Speelman;
- (8) Lucille Russell;
- (9) Carl Gurley;
- (10) W. Gerard Best;
- (11) Michael Brennan;
- (12) Margaret Casper;
- (13) Elizabeth Buchmiller;
- (14) Daniel Clemson;
- (15) Mary Fagar;
- (16) George Franklin;

3. A true and correct copy of the Office of Auditor General's collective bargaining agreement is attached to this motion as Exhibit "36".

4. Of the plaintiffs in these cases, the following persons are subject to that collective bargaining agreement:

- (1) James DiCosimo;
- (2) Karol Danowitz;
- (3) Louise Jurik;
- (4) Donald Ruggerio;
- (5) John Weikel;
- (6) Walter Speelman; and
- (7) Lucille Russell.

5. The collective bargaining agreement provides for arbitration of grievances relating to discharge and each of the above-listed plaintiffs have filed a grievance seeking arbitration.

6. The remaining plaintiffs listed below are not subject to the collective bargaining agreement:

- (1) James Melo, Jr.;
- (2) Carl Gurley;
- (3) W. Gerard Best;
- (4) Michael Brennan;
- (5) Margaret Casper;
- (6) Elizabeth Buchmiller;

- (7) Daniel Clemson;
- (8) Mary Fagar;
- (9) George Franklin;

7. Each of the plaintiffs in these cases was terminated via correspondence which has been placed in their personnel files. True and correct copies of these termination letters have been attached hereto as Exhibits "19"- "34". It is the policy of the Office of Auditor General that such termination letters are strictly confidential and are not made public nor shown to anyone, even prospective employers who specifically request the information.

8. The termination letters attached as Exhibits "19"- "34" have not been shown to anyone nor will they be shown to anyone in the future.

9. It is also the policy of the Office of the Auditor General that the information which is made public concerning past employees is statutorily provided as public information:

- (1) Date of hiring;
- (2) Dates of employment;
- (3) Date of termination;
- (4) Birth date;
- (5) Job classification;
- (6) Salary; and
- (7) Headquarter county.

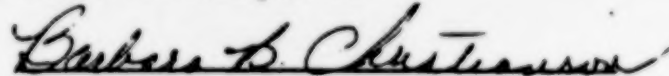
10. No information concerning the basis for a termination is made public or given to prospective employers or other parties requesting that information.

11. Nowhere in the plaintiff's personnel files is there any mention of their political affiliation.

12. At no time have I been aware of the political affiliation of any of the plaintiffs nor did political affiliation play any part in the decision to discharge them from their positions with the Office of Auditor General.

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13. On February 1, 1989, the Office of Auditor General employed 783 persons. This number is based upon my personal review of the payroll records for that period.



Barbara B. Christianson

Dated: 8-7-89

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES C. MELO, JR., et al.	:	CIVIL ACTION
v.	:	NO. 89-2935
BARBARA HAFER	:	
and	:	
JAMES J. WEST, ESQUIRE	:	
CARL GURLEY, et al.	:	CIVIL ACTION
v.	:	NO. 89-2685
BARBARA HAFER	:	

**PLAINTIFFS' ANSWER TO MOTION FOR SUMMARY
JUDGMENT OF DEFENDANT BARBARA HAFER**

For the reasons set forth in the attached Memorandum of Law and in consideration of the documents included in the Appendix, all of which are incorporated herein by reference thereto, plaintiffs respectfully submit that defendant Hafer's Motion for Summary Judgment should be denied.

GROEN, LAVESON, GOLDBERG,
RUBENSTONE & FLAGER

BY: _____
WILLIAM GOLDSTEIN, ESQUIRE
Four Greenwood Square
Suite 200
Bensalem, PA 19020
(215) 638-9330
Counsel for Plaintiffs

Dated: August 31, 1989

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES C. MELO, JR., et al.	:	CIVIL ACTION
v.	:	NO. 89-2935
BARBARA HAFER	:	
and	:	
JAMES J. WEST, ESQUIRE	:	
	:	
CARL GURLEY, et al.	:	CIVIL ACTION
v.	:	NO. 89-2685
BARBARA HAFER	:	

**EXHIBITS TO
PLAINTIFFS' ANSWER TO MOTION
OF DEFENDANT BARBARA HAFER
FOR SUMMARY JUDGMENT**

William Goldstein, Esquire
GROEN, LAVESON, GOLDBERG,
RUBENSTONE & FLAGER
Suite 200
Four Greenwood Square
Bensalem, PA 19020
(215) 638-9330

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2. Declaration of Donald Bailey of August 30, 1989.
3. Handwritten statement of George Almasi, Director of Personnel and Labor Relations of the Pennsylvania Auditor General's Office from January 1985 through January 1989.
4. Title Page and Pages 10 and 11 from the transcript of proceedings before the Pennsylvania State Senate Committee on Appropriations on March 9, 1989.
5. Declaration of William Goldstein of August 31, 1989.
6. Page 75 from sworn testimony of John Kerr in the Karol Danowitz AFSCME arbitration hearing.
7. Report of James L. McAneny, Esquire, Chief Counsel to the Pennsylvania Auditor General of October 17, 1988 and cover letter to James West of October 18, 1988.
8. Newspaper article from the Allentown Morning Call of November 3, 1988.
9. Newspaper article from the Philadelphia Inquirer of February 2, 1989.
10. Statements of plaintiffs Melo, Jurik, DiCosimo and Danowitz.
11. Letter of February 14, 1989 from Auditor General Personnel Director Barbara Christianson to Shelley G. Livingood, a field Auditor I.
12. Letter of March 30, 1989 from AFSCME counsel director Fred Davis to Ms. Livingood.
13. Unemployment Compensation Notice of Determination of April 17, 1987 for plaintiff Melo.
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15. Unemployment Compensation Notice of Determination for Walter W. Speelman, Jr.
16. Witness statement of John Weikel.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES C. MELO, JR.	:	CIVIL ACTION
v.	:	
BARBARA HAFFER and	:	NO. 89-2935
JAMES J. WEST, ESQUIRE	:	

DECLARATION OF DONALD BAILEY, ESQUIRE

I, DONALD BAILEY, ESQUIRE, being duly sworn according to law depose and state:

1. Since January 1987, Mr. West has considered me an enemy. In my capacity as Auditor General of Pennsylvania, I discovered information which raised questions of corruption that implicated if indeed they would not greatly embarrass Richard Thornburgh, present United States Attorney General. Mr. Thornburgh is the former governor of Pennsylvania and a major force in the national republican party. Additionally, these matters clearly implicated Mr. Thornburgh's current chief assistant, Robin Ross. When I brought this information to Mr. West's attention, he reacted angrily and threatened that he would go after me. Mr. West is a republican and, as a republican in the state of Pennsylvania, Mr. West is within the overall ambit of Mr. Thornburgh's political authority. Indeed, Mr. West is a personal protege of Mr. Thornburgh. I believe that Mr. West was trying to protect Mr. Thornburgh by threatening me. The area of corruption involved was the Pennsylvania Department of Transportation and Hubco Ford Truck Sales, Inc.

2. Because of Mr. West's lack of cooperation with regard to my investigation involving the Pennsylvania Department of Transportation and Hubco Ford Truck Sales, Inc., (and others as well) I was forced to file an administrative Writ of Summons and serve it upon Mr. West so that his "cooperation" could be given under mandate of compulsory process. Attached hereto and marked Exhibit "1" is a copy of the Writ of Summons. Mr. West refused to comply with the Writ of Summons and was ultimately successful in refusing to reveal the information I sought to discover *only* because I was defeated for re-election before the

discovery process could be completed. I believe that it was essential to Mr. West, in resisting this corruption probe, that I be defeated and that one of Mr. West's motivations in leaking information to Barbara Hafer during the course of the campaign was to secure my defeat to protect Mr. Thornburgh and Mr. Ross.

3. On October 30, 1987, I personally offered to Mr. West my complete cooperation in his investigation of corruption during the administration of my predecessor, Al Benedict. On November 2, 1987, my chief counsel, James L. McAneny, met with Mr. West and repeated my offer of complete cooperation. In that meeting, Mr. West advised Mr. McAneny that I should *not* suspend or take any adverse personnel action against any employees in my department.

4. The information provided to me by Mr. West in his letter of January 21, 1988 was, in accordance with Mr. West's instructions, kept personal and confidential. Upon reviewing the letter, I was impressed by the fact that except for two names on the list, one of whom had already been completely vindicated by Mr. West (Karol Danowitz); that during his tenure, there had not been (and never has been) any form of investigation of these people. There was absolutely no proof of knowledge by the employees of these alleged payments (if indeed they had ever been made) and therefore it would have been grossly unfair to the employees to publicize the matter or to take any action against them. In addition, I did not trust Mr. West and was unwilling to proceed without an express disclaimer from him because of the admonitions in his letter of January 21, 1988.

5. The only other persons who knew of Mr. West's letter were my counsel, Mr. McAneny, and my chief investigator, Mr. Ficco. Neither I nor Mr. McAneny nor Mr. Ficco disclosed the letter or any portion thereof or its existence to third parties, to anyone else in the Auditor General's office or to anyone in Barbara Hafer's campaign.

6. I was shocked and appalled when Barbara Hafer, on September 8, 1988, publicly revealed to the press that I had received the letter of January 21, 1988 from Mr. West and that the letter contained a list of 20 employees who were allegedly

involved in a job-selling scheme during the Benedict administration. Immediately after Ms. Hafer's public statements, I received numerous telephone calls from reporters and was confronted with Ms. Hafer's public revelation as to Mr. West's letter and its contents, and, I replied as best I could under the circumstances. Ms. Hafer could not have obtained information about the letter or its contents from any source other than Mr. West and she certainly did not obtain information about the letter from me or anyone in my department.

7. I have read Mr. West's "declaration" in which he denies leaking to Ms. Hafer information about the January 21, 1988 letter. I am certain that Mr. West is being dishonest in his declaration and I am sure that Mr. West did in fact he did leak the letter to Ms. Hafer. There is no other source from which Ms. Hafer could have obtained the definitive information she revealed to the press on September 8, 1988.

8. I have been provided with a copy of the transcript of my debate with Ms. Hafer before the League of Women Voters. A copy of that transcript is attached hereto and marked Exhibit "2". The statements made by Ms. Hafer in the debate, with regard to Mr. West's letter of January 21, 1988, demonstrates that Ms. Hafer had specific knowledge of the contents of the letter which she could not have had without having seen the letter. As a person very familiar with this matters I draw the following inferences from statements made by Ms. Hafer in the debate:

a) When Ms. Hafer stated that she had talked to Mr. West about the fact that she would investigate and fire "those people" (the people on the list), this fact and other information available to me makes it clear that Ms. Hafer and Mr. West together created and guided this campaign issue and used the campaign promise of firing the people on Mr. West's list on the dishonest and inaccurate premise that they were "job purchasers" in order to defeat me in the November 1988 election.

b) When Ms. Hafer stated that the 20 names were given to me "at my request", and that she had the transmittal letter, she had to have been referring to the letter of January 21, 1988. The letter of January 21, 1988 was the only letter of transmittal I

received from Mr. West in which these 20 names were specified. There is no other letter on which these names appear.

c) Ms. Hafer stated that Harold Imber's name was on the list. At no time prior to the debate had there been any public disclosure of the names on the list. Mr. Imber's name was in fact on the list and the only way Ms. Hafer could have known that Mr. Imber's name was on the list is if she had seen the letter. By publicly stating in the debate that Mr. Imber's name was on the list, Ms. Hafer conclusively (and inadvertently) demonstrated that she had received a copy of Mr. West's letter of January 21, 1988 and had seen the list.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: August 18, 1989

Donald Bailey, Esquire

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF THE AUDITOR GENERAL**

TO: James J. West
Acting United States Attorney
Middle District of Pennsylvania
Federal Building
Harrisburg, Pennsylvania 18501

WRIT OF SUMMONS

By virtue of the Authority of Article VIII, Section 10 of the Constitution of Pennsylvania, Section 1602 and Sections 401, et seq., of the Fiscal Code, Act of April 9, 1929, P.L. 343, as amended, you are hereby directed and commanded to appear before the designated representatives of the Auditor General at 224 Finance Building, Harrisburg, Pennsylvania 17120, and at such date and time as shall be arranged therefor, to give testimony and provide such other information as you possess relative to Contract Number 771770-01, awarded June 14, 1984, between the Commonwealth of Pennsylvania, Department of Transportation and Hubco Ford Truck Sales, Inc.

Witness the hand of James L. McAneny, Chief Counsel for Don Bailey, Auditor General of the Commonwealth of Pennsylvania, given under the seal of the Department of the Auditor General this 10th day of December, 1987.

James L. McAneny
Chief Counsel for
Don Bailey, Auditor General of the
Commonwealth of Pennsylvania

PROOF OF SERVICE

I certify that I have personally served this WRIT OF SUMMONS, at _____, at _____ a.m./p.m. this _____ day of _____ 198 , upon the named respondent or the adult

**The People's Business Debate
Don Bailey and Barbara Hafer
Auditor General**

Marilyn Brill: "Hello, I'm Marilyn Brill, President of the League of Women Voters of Pennsylvania. The League is pleased that debating has become an expected part of the election season. We have a proud history of highlighting election issues. Today, we join the PA Public Television Network in sponsoring a debate between the candidates for Auditor General, so that you, the voter, have a better chance to judge the candidates directly and go to the polls better informed. The moderator is Kate Megargee, anchor of the People Business. Kate. . . ."

Kate: Thank you Marilyn Brill. Welcome to our debate between the democratic and republican candidates for the office of Auditor General of Pennsylvania. Those candidates are . . . Don Bailey the incumbent Democrat of Greensburg in Westmoreland County and Republican Barbara Hafer of Elizabeth in Allegheny County. Welcome to you both.

The Auditor General of Pennsylvania is responsible for making sure that the money the State spends is spent in compliance with all laws and regulation regarding the disbursing of state funds. The Auditor General reviews nearly every financial transaction of State Government, with the exception of the legislature and certain commissions and authorities. The Auditor General has the authority to investigate various state departments and can subpoena documents and witnesses. The Department audits state departments, state universities, prisons and welfare recipients, as well as public and private agencies that receive state funding. The Auditor General also audits the Liquor Control Board and its more than 6700 state stores. Joining me on our panel to ask questions of the candidates today are Bill Steinbach, evening news anchor for KDKA Radio in Pittsburgh, and Harry Stoffer from the Harrisburg Bureau of the Pittsburgh Post Gazette.

Prior to the program, a coin toss was held to determine the order in which the candidates would reply to reporters' questions and the order of closing statements. Both candidates have agreed to a set of ground rules established by the League of

Women Voters. Each candidate will have a minute and 30 seconds to reply to a panelist's question and then his or her opponent will have one minute and 15 seconds to respond to the question or for rebuttal. Bill Steinbach, you have the first question for Mrs. Hafer."

Steinbach: "Mrs. Hafer, we're a couple of weeks away from the election now. Throughout the campaign you have made suggestions from time to time that Mr. Bailey has been macing his employees to accumulate campaign funds. Perhaps this close to the election, can you substantiate those charges. Can you nail this down for us?"

Hafer: "Let me just say, Bill, that as an elected official in Allegheny County, I have 8,000 employees. Over the last five years, those employees have contributed to me \$9,000. That comes out to about a buck 16. Don Bailey has over 800 employees, and he has collected over the last few years \$225,000. \$225,000 have come from his employees through their paychecks. He not only maces, he continually asks people, demands of people, to give him money for his own political ambitions. It is documented. It is fact. It is reported on his campaign reports. I think he maces, and a lot of other people think he maces people."

Kate: "Mr. Bailey."

Bailey: "Well, that's simply false. The charges are inaccurate. I would like to comment for the benefit, particularly of our listening audience, that Mrs. Hafer made these charges in Harrisburg. They were made publicly. The results of those charges, which, of course, would constitute wrongdoing if, in fact, they were true, and they are not, were presented to Republican Attorney General Leroy Zimmerman. He dismissed them out of hand as inaccurate and untrue. Individuals who hold office and run for office in Pennsylvania over the years, including Mrs. Hafer, have received help and contributions and we receive voluntary contributions from employees in virtually a number of different offices, including contributions that we have received from various insundre departments, not our own, or office. These are not solicited or forced in any kind of a way. They are voluntary contributions, and her statistics are simply false."

Kate: "Your time for answering that is up. Mr. Stoffer, you have a question then for Mr. Bailey."

Stoffer: "I guess, following that train of thought, with the history in your department under the prior administration of job selling and macing perhaps, why did you not simply make a clean break, especially in light of the fact that such things as macing may not be spoken, but may be implied by innuendoes to employees. Why not just make a clean break and say 'I will accept no contributions from employees of the Auditor General's Department?'"

Bailey: "Harry, if someone wants to make a contribution, and it's a voluntary contribution, there is no reason why those contributions should not be accepted. Mrs. Hafer has done so, she has admitted publicly that she has. Virtually every person in office that I know of has done so, or accepted voluntary contributions."

Those charges, incidentally, that occurred during the prior administration have absolutely nothing to do, and the U.S. Attorney has made it very, very clear, that the, uh, in no way do any of those difficulties touch in any way, and he has publicly stated this, uh, on me. And I am very proud of the fact that we have just turned in an absolutely remarkable job of administration and effectiveness during my tenure. And the difficulty with this campaign, and the very sad part about it, is that a relative and meaningful discussion of substantive issues for the benefit of the public to evaluate a campaign has been. And I think that substantive important issues in the campaign, when they touch on things of important public, should be focused on. The things that you have mentioned were occurred five and six and seven and eight years ago and have absolutely nothing to do, and have never had anything to do with the fine job that we have turned in for the public as Auditor General of the Commonwealth of Pennsylvania."

Kate: "O.K. Mr. Bailey. Thank you. Mrs. Hafer, your response."

Hafer: "Don, that simply is not true and you know it. Let's stick to the facts. The fact is, your Chief Deputy, Harold Imber, is in jail for what . . . racketeering and job selling. Two other people under the Benedict administration are in jail for what . . .

including Al Benedict . . . racketeering and job selling. Your administration, Don, not the previous administration. There are a list of 20 names of people that bought their jobs given to you by Jim West, the U.S. Attorney of the Middle District. He sent me a letter responding to the information that I gathered about people that bought their jobs, that have been maced. He sent it to the FBI. You know the facts and the facts are there is job selling, there is corruption in your office. It is a legacy of incompetence and corruption that you are perpetuating. Your own Chief Deputy that you, that you promoted is in jail and that investigation is continuing."

Kate: "And now, Harry Stoffer has a question for Mrs. Hafer."

Stoffer: "Mrs. Hafer, your opponent has been ridiculed in that past for what I'll call for a lack of a better phrase "Macho politics." Now in this campaign you have urged women to vote for you because you are a woman, and you have urged women to give to your campaign because you are a woman. Aren't sexual politics of any stripe wrong, and how can you defend those sorts of appeals?"

Hafer: "Well I like the word sexual politics; but I think that we are talking about two different things. The act that Pennsylvania has one of the lowest rates of elected women means that women, one, have difficulty in this State. Don has a record of his behavior. I have a record of my, history of my behavior. Women need to support women. It has been said that women don't support women and women don't contribute to women. That is absolutely not true. We have a program geared towards women to help them and encourage them to give financially. But the majority, the truth is that men and women support me, have supported me and elect me. That is a continuing program that I think I will always have. I want to show that women support women."

Kate: "Mr. Bailey, you have a response to that."

Bailey: "Well, I think the responsibility that we all have is to support the best candidate for a particular job. We have, in the Auditor General's Department, equalized pay for women, we have led the way in the Commonwealth of Pennsylvania for work-site day care, and we have done so in a very strong and

aggressive fashion. We have never tried to appeal to a sexist issue or an interpretation of politics or political interpretations of candidate's support in any way. I have been very, very strong in the support of decent and qualified women candidates on a number of occasions and will continue to do so in the future. By the same token, my responsibilities are to a general electorate. We have conducted ourselves in that manner without an idea to be prejudicial either way. And let me conclude with adding that the misinformation and the dishonest information that my opponent referred to just earlier concerning wrongdoing in the Auditor General's office is completely and totally false, and relates to wrongdoing during Al Benedict's administration. She has misled the public. Thank you."

Kate: "Mr. Steinbach, your question now for Mr. Bailey."

Steinbach: "Mr. Bailey, a question of style. Your critics suggest that you grandstand all the time. When you do discover fiscal mismanagement in some governing body or a school district, you call a news conference and make a general announcement. Doesn't the office also carry with it a responsibility to provide some expertise to these people to show them how to get out from under the problems that they are laboring with?"

Bailey: "No, it does not. As a matter of fact, the office is specifically precluded, as a matter of constitutional and professional ethic and standard not to provide pre-audit advice. The functions are post-expenditure. We have a responsibility to find facts, prosecutors and/or other agencies of government have a responsibility then to come in and try to correct those difficulties and problems. If we were to do what you suggest, we could never return to an audited entity and do other than audit ourselves, and that is something that as a professional and governmental standard in auditing, is to be avoided. Audit standards and general standards of government accounting and auditing standards, in fact, defy independence in those cases where you are going to audit yourselves. Your independence would be gone. You, therefore, have a responsibility to take the information and report it to the public. We have a duty and a statutory obligation to do so. That is what we have done. We have touched on controversial matters because they are of interest to the public, because they are of interest to the press,

and we have produced a tremendous work product in that regard. We shall continue maintaining the standards that we have developed and those standards require that we report facts and information to the public and that we are not allowed in any kind of cases, to give pre-audit advice. That is something that we must do as a matter of law."

Kate: "And, Mrs. Hafer, now your response."

Hafer: "Don, you know that is not true. The truth is that two District Attorneys in Jeannette and in Carbon County, your own Westmoreland and Carbon County have said that your audits are riddled with errors and ridiculous. You know that, I know that, the press has reported that. You are a grandstander. You run into town, you hold a news conference. It is the worst kind of politics and the worst kind of behavior for a public official. You know it. It has been documented. It's been said by two District Attorneys in Carbon County School District and also in your own hometown of Westmoreland County. It is unbelievable that you could say that you have, uh, championed on-site day care. You were against on-site day care. You were talked into it by two women in your staff. It's in your report. Read your own report."

Kate: "Bill Steinbach now has a question then for Mrs. Hafer."

Steinbach: "Mrs. Hafer, a degree and a career in nursing, a term as the minority Commissioner of Allegheny County, do you really think that you are ready for a job which, on the surface at least, requires some legal and and fiscal expertise?"

Hafer: "First of all, not only am I a registered nurse, I am a health care professional for 20 years before I was a public official. I have a long history of public service. A long history of working with budgets. A long history of personnel matters. This office of Auditor General needs a professional administrator. I can hire a lawyer. I might hire Don. On the other hand, we need an administrator in that office. We have a legacy of incompetence. Twelve years of people, uh, uh, crime and corruption. Twelve years of corruption ineptness in that office. We have 20 people named by the U.S. Attorney as having brought their jobs. He has done nothing about it. That list was given to him by his request. He's done nothing about it. And he's a lawyer. We

need someone that knows how to practice professionally, high standards, integrity. And with a history as a County Commissioner in the second largest county in the Commonwealth, I have a budget of \$440,000,000,000 and 8,000 employees. I am not only qualified, the Press and Post Gazette and the Tribune Review have said that I am the best qualified."

Kate: "Mr. Bailey."

Bailey: "Well, I think that maybe the best evidence is the kind of job performance that you have turned in as a Commissioner. Thelma Shroeder was an appointee of yours out there at the prison, the jail. You are chairman of the Prison Board. Two people are dead today, while you were running around the state campaigning for Lt. Governor. Law suits were filed in May. What responsibility did you perform. Apparently none. Now let's go back to Jeannette. That was not an audit. That was information that we gave to investigators. And it's no secret that I opposed Mr. Driscoll for incompetence and for not doing his job when he ran for District Attorney. But even he admitted publicly that close to \$3,000 in hot dogs, or missing food or money was gone. Money representing 20 to 30 percent of the profits of a school activity fund. I think that's wrong. Your references to Carbon County are just plainly and simply totally false, baseless and without foundation and fact."

Kate: "Harry Stoffer you have your question for Mr. Bailey."

Stoffer: "Mr. Bailey, last week you disclosed the results of your investigation into the 20 names that had been given to you by the U.S. they were referred. And all of that information that we requested and that we helped with and that we investigated on our own initiative, we weren't asked, we weren't challenged, we did it because we believed it was the right and proper thing to do, is five and six and seven and eight years old. And the majority of those people, these notes and names that were gleamed from reports, none of those people had been investigated, there was no attempt to charge them in wrongdoing, they were names that needed to be checked out. And you know, we need to respect people's rights and we need to conduct ourselves in accordance with responsibility. We were prompt, we were thorough, we were complete and very decent and open

and nonpolitical about it and that's what we are going to continue to do."

Kate: "O.K. Mrs. Hafer."

Hafer: "Don, that is simply not true. The truth really isn't in you. Those 20 names were given to you by Jim West at your request. I have the letter, the transmittal letter. I talked to Mr. West last week. He said not only did he give you the information, he gave you specific instructions to proceed with the investigation and punish those people as you saw fit. You were the only one who has the names that can release them. You are absolutely right, the FBI won't release those names. You are the ones that should release those names. You are the ones that wanted the list. You were given the list in January and again instructed in July to clean house. Nine months is not timely. It is a continuation of those, uh, the corruption of the previous administration. You not only, those people bought their jobs, you make them keep paying."

Kate: "O.K. Mrs. Hafer and Mr. Bailey, I am going to exercise my moderators' prerogative now to ask a few questions in the time remaining. You will each have a minute and 15 seconds to respond to these questions and I will direct my first question to Mrs. Hafer."

Following up on what you just said, if you were elected Auditor General, what would you do to, uh, remove that some people see as a remaining cloud over the Department, considering the fact that it's known that there are these 20 people?"

Hafer: Well, one of those people are now in jail, Harold Imbere, uh, on that list. But let me just tell you what I would do, and I would talk, and I have already talked with the U.S. Attorney's office, you said that you couldn't do anything about two of them because they had been ordered reinstated by an arbitrator. I understand that in another case you have appealed an arbitrator's decision to the state Supreme Court over an employee who put in for \$14 too much in expense reimbursement. Uh, don't you have a case of misplaced priorities here, and does this second case not smack of some vindictiveness against an employee who came up with some audit results you didn't like?"

Bailey: "No it does not, Harry. First of all, I don't have the authority to appeal an arbitrators' decision that's years old. I can't do it. So the premise of your question is simply incorrect. Secondly, the reason that we, in fact, are appealing the other case is because it is something that occurred during my administration and we are bound and determined to see that the law is enforced. There is no inconsistency at all. I am powerless in the first two cases. And incidentally, on those 20 names, isn't it time to be honest with the public. The press core, myself, even my opponent honestly knows that the U.S. Attorney has said that I cannot in, there is no way that I can reveal those names. He can't reveal them. I can't reveal those names. He knew that when about this, when I am Auditor General I will investigate and fire those people. There will be no job selling, no corruption and no macing in Hafer's administration. It is unbelievable that in Pennsylvania that we have a history of macing and job selling. That went out years ago, years ago. Yet we have a fellow that is supposed to be of the highest standard, and his predecessor, his colleague, they had joint fundraisers together in '84 continuing, we have Don Bailey continuing the corrupt practices of the last administration, He and Al Benedict are cut out of the same bolt of cloth. There is corruption in that office. I am going to investigate and I am going to fire those people."

Kate: "Mr. Bailey."

Bailey: "Yeah, first of all, what Barbara has said is totally and completely false. Now we have set up an entire new standard of ethics in the office, we wrote that into the office when I came into the office. The information that she is talking about are charges made against people, some of them unjustified, incidentally, that were, goes back five and six and seven years ago. Barbara has just made my day. The fact that she has discussed these issues with the U.S. Attorney itself raises a number of serious questions. She is also incorrect in that the U.S. Attorney does have the freedom, if he would like, to certainly, to release those names. In fact, he has commented to the press that he can do so. One must wonder why, if those two were talking and/or working together, why this list was ever floated to the press to begin with. When we did check these people out, we found that half of these people had absolutely no

knowledge of these matters. That information was made to the U.S. Attorney. We discipline people in the office. We enforce the law. We are going to continue to enforce the law. We will do it fairly and justly. Unfortunately, or fortunately, depending upon your point of view, there is absolutely no legal action which I can take against these people. If that is used in a dishonest way by a political opponent to create suspicion or falsehood, that's too bad. My self-respect requires that I tell the truth and I have."

Kate: "Thank you Mr. Bailey. We have now reached the end of our question and answer period. I want to thank Bill Steinbach of KDKA Radio and Harry Stoffer of the Pittsburgh Post Gazette, for joining us on our panel today. Now it's time for closing statements. You will have a minute and a half, and the coin toss determined that Mr. Bailey would speak first."

Bailey: "Thank you very much. To the voters of the Commonwealth of Pennsylvania, I would ask that you consider and look at the remarkable record that my administration has turned in in your service. We have boosted productivity remarkably. In-house education, work-site day care for employees in our office that they pay for that has led the way as a striking example of what positive administration can do. We have gained national recognition in helping Pennsylvania earn a certificate of merit for financial reporting. We have fostered, and I have led the way, with an intergovernmental committee, appointment with the National Association of State Auditors, that for the first time will produce coordinated audits of use to the legislature and of use to the press that will be able to inform the public of what's really going on with accountability. As to the charges that my opponent has raised, I hope that you have, and I know that you do, the judgment to prevail and to think in cases like this that those that cannot run a positive campaign, and distort or misuse information from the past to try to dismerge political opponents, hide the deeds an advocate, not a advisory. I hope that you see that I am the person to do the job. Thank you."

Kate: That concludes our debate between the democratic and republican candidates for Pennsylvania Auditor General. I would like to thank Mrs. Hafer and Mr. Bailey for being with us today."

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES C. MELO, JR. : CIVIL ACTION
:
v. :
:
BARBARA HAFFER and :
JAMES J. WEST, ESQUIRE : NO. 89-2935

DECLARATION OF DONALD BAILEY, ESQUIRE

I, DONALD BAILEY, ESQUIRE, being duly sworn according to law depose and state:

1. I served as Auditor General of Pennsylvania from February 1985 to February 1989. My predecessor was Al Benedict and my successor was Barbara Hafer.

2. When I began my term of office in February of 1985, I determined that there was a then-existing policy within the Auditor General's department that non-union employees would not be dismissed except for just cause (misconduct or poor job performance) and that the just cause provisions in the collective bargaining agreement were applied equally to non-union employees through the Policies and Procedures Manual. In fact, I was even advised by my counsel, James McAneny, who had been counsel to the Auditor General during the Benedict administration, that I was legally required to fire only for cause and that this legal requirement applied to both union and non-union employees.

3. During my four year term in office, I never fired a union or non-union employee except for just cause. It was the official policy of the Auditor General's Office during my term of office that no employee, union or non-union, would be fired except for cause.

4. I consulted with my personnel director during my term of office with regard to the policy that no employee would be fired except for just cause and through my personnel director, it

became common knowledge within the Auditor General's Department that no employee, union or non-union, would be fired except for just cause.

5. Based upon what I learned when I took office, in consulting with my counsel and reviewing department records, I can state with reasonable certainty that during the Benedict administration, it was also the official policy of the Auditor General's Office that no employee, union or non-union, would be fired except for just cause. The provisions in the union contract and the employment manual which provided that no employee would be fired except for just cause were consistently interpreted during the Benedict administration and my administration to mean exactly what they said and this fact was common knowledge with the Auditor General's department. Mr. Benedict served for two terms (eight years) and therefore, to my knowledge, the policy of not firing except for just cause was the official policy of the Auditor General of Pennsylvania for at least twelve years preceding February 1989.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATE: August 30, 1989


DONALD BAILEY, ESQUIRE

To Whom It May Concern

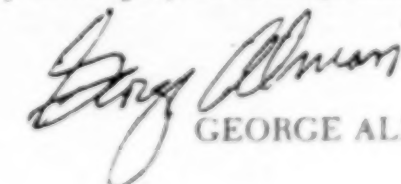
I George Almasi served under Don Bailey Auditor General of Pa. as Director of Personnel and Labor Relation from Jan. 1985 thru Jan. 1989.

It was the policy of the Dept. of the Auditor General that the Policy and Procedure Manuel was issued to every employee (Date of Hire New Employees) union protected as well as management. The Policy and Procedure Manuel followed the Labor Agreement as not to cause a controversy on legality. This afforded management personnel the same rights afforded to union protected employees.

All dicipline issued was by the Personnel Director after discussion with the Auditor General and Chief Consul. Disipline was then issued according to the degree of the offense but also in this order

1. Oral warning
2. Written warning
3. Suspension
4. Termination

All disipline was discussed with the employee-union rep-rep from Auditor Gen personnel — Chief Consul and Personnel Director present in case of management personnel the union rep. was not called. In my tenure as Personnel Director no one was dismissed without just cause. This was the same procedure followed by the previous administration. In fact the previous administration placed a fee on the manuel if it were not returned according to a record number kept by personnel. I re-wrote the manuel as the Labor Agreement changed and also include a code of ethics and travel policy which was also changed by Labor Agreement. Before the new manuel was issued to all employees of the Auditor General's Dept. It was approved by Chief Consul Labor Dist. Rep. Office of Administration. This policy manuel was to be followed by all employees management and labor.


GEORGE ALMASI

PENNSYLVANIA STATE SENATE COMMITTEE
ON APPROPRIATIONS
BUDGET HEARING
AUDITOR GENERAL

TRANSCRIPT OF PROCEEDINGS

BEFORE: SENATOR RICHARD A. TILGHMAN, CHAIRMAN
SENATOR RAPHAEL J. MUSTO
SENATOR SENATOR J. BARRY STOUT
SENATOR VINCENT J. FUMO
SENATOR M. JOSEPH ROCKS

DATE: MARCH 9, 1989, 2:00 P.M.

PLACE: SENATE MAJORITY CAUCUS ROOM
STATE CAPITOL BUILDING
HARRISBURG, PENNSYLVANIA

PRESENT:

GENERAL BARBARA HAFER
JOHN TSUCHALAS
DENNIS MOODY

SHERRY BOWES, REPORTER
NOTARY PUBLIC

a hundred dollars.

GENERAL HAFER: Well, if they're reported, that would be legitimate. We did not match up — if you're —

CHAIRMAN TILGHMAN: Excuse me a minute. May I interrupt, and it has nothing to do with the hearing. I have a group of students and I have to leave for a minute to have a picture taken and I'll turn the chair over to Senator Rocks, and then you can continue.

I would also say that I'm not a lawyer and you've been through this ten times, but I certainly don't want to get into matters of litigation. I know Senator Fumo is on one side of it and you're on the other, but just —

SENATOR FUMO: No, I'm not trying to litigate here, Mr. Chairman.

CHAIRMAN TILGHMAN: — use your good judgment. —

SENATOR FUMO: I'm not trying to litigate the case here, Mr. Chairman.

With regard to an additional 30-some employees, I believe, that you also dismissed, I believe your press secretary — I assume he speaks for you — Mr. or is it Mrs. or Ms., I don't know if it's a woman, Morse, M-o-r-s-e, is that Mr. Morse?

GENERAL HAFER: Chuck Morse is here, press secretary.

SENATOR FUMO: Excuse me?

GENERAL HAFER: Chuck Morse is here.

SENATOR FUMO: Okay. I assume he speaks for you. I have some various — copies of some various newspaper stories in which he is quoted. The first one I have here is from the Patriot, where he's quoted, and this is of the 30, not of the 18.

GENERAL HAFER: Twenty-nine.

SENATOR FUMO: Twenty-nine, whatever it was. He said, "There is no doubt that if you look down at the list, they were people active in former Auditor General Don Bailey's campaign." He's further quoted as saying, "Most were competent employees who were let go." That was on February 22nd, 1989.

There's another one in the Post Gazette that says at least one of them was a Republican, I'm glad to see that. Another one, another article in which the 30 — "All 30 fired Tuesday were partisan holdovers from the Democratic administration, said the

auditor's spokesperson, Charles Morse. The fires are typical of any change of party rule, Morse said, adding that there could be more changes."

I wonder how much political consideration

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

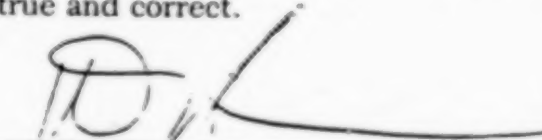
JAMES C. MELO, JR., et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
BARBARA HAFFER and	:	
JAMES J. WEST, ESQUIRE	:	NO. 89-2935

DECLARATION OF WILLIAM GOLDSTEIN, ESQUIRE

I, WILLIAM GOLDSTEIN, ESQUIRE, being duly sworn according to law depose and state that with regard to both the Melo plaintiffs and the Gurley plaintiffs, no claim for damages has ever been made against the Commonwealth of Pennsylvania and all claims for damages have been made against Barbara Hafer individually and in her individual capacity. Service of the Complaint was made upon Barbara Hafer and no service was attempted upon any other Commonwealth agency or the Pennsylvania Attorney General's Office. No money has been sought and no claim has been made for monetary damages to be paid out of the Commonwealth's treasury.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATE: 8/31/89


WILLIAM GOLDSTEIN, ESQUIRE

JA-198

but that was the way in which we went.

Q. Okay. Okay, but essentially, you're saying any -- any affidavits you would have prepared would have been completed by September of '87?

A. Well, if not September, shortly thereafter.

Q. Now, with regards to Ms. Danowitz, do you have any reason to believe that Ms. Danowitz knew that this job was allegedly purchased for her?

A. Well, until I walked in here today I don't ever remember seeing Mrs. Danowitz in my life, so I don't know her. So I don't know whether she would or she wouldn't. I have no knowledge whatsoever, on not even hearsay. It's not a subject that I discussed with Mr. Theurer, that I discussed with Mr. Danowitz whenever I would have conversations with him. I just wouldn't know.

Q. You just took the alleged money?

A. Well, yea, exactly. I never -- with any of these people, I never had any conversations, because it didn't matter whether they knew or whether they didn't.

Q. What did you do with all the money?

A. What did I do with the money? I used it for political purposes for Al Benedicts campaigns for just -- quite a variety of things. At the time that the -- that that money came about, we were in the Pennsylvania Democratic State Committee, and we needed about a quarter

JA-199

Commonwealth of Pennsylvania
Office of the Auditor General
Harrisburg 17120

DON BAILEY
AUDITOR GENERAL

224 Finance Building
Harrisburg, PA 17120

October 18, 1988

Honorable James J. West
Acting United States Attorney
Middle District of Pennsylvania
Federal Building
Harrisburg, Pennsylvania 17108

Dear Mr. West:

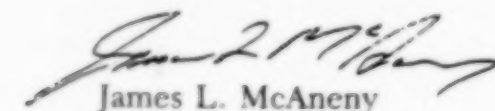
Please find enclosed a copy of the internal investigative report which was delivered to the Auditor General yesterday.

Upon your review of the enclosure, I would be pleased to provide any of the supporting documents referred to in the report, or to receive any evidence which has not previously been provided to us which may contradict any of the findings that we reached.

I would also appreciate an opportunity to discuss the situation involving Mr. Guido Alesi. Because he was not named by you in the list of employees that we have permission to take action against, and with the knowledge that he was recently called to testify before the grand jury, we are reluctant to proceed without assurances that any act or statement on our part would not impair your investigation into whatever matters occasioned your decision to examine him.

After you have completed your review of our report, please contact me at your convenience concerning the matters addressed in this letter.

Very truly yours,


James L. McAneny

Enclosure

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF THE AUDITOR GENERAL**

SUBJECT: Job Selling Investigation

To: Honorable Don Bailey
Auditor General

FROM: James L. McAneny, Chief Counsel

DATE: October 17, 1988

This is a final report of the findings with regard to the investigation of the various allegations received from the United States Attorney's office concerning job selling under the Benedict administration, and conducted by myself and Nick J. Ficco, Jr., Director of the Bureau of Investigations. Copies of the documents referred to in this memorandum are attached for your convenience.

HISTORICAL BACKGROUND

On January 14, 1988, Acting United States Attorney James J. West conducted a press conference to announce the formal indictment of Alfred P. Benedict, the former Auditor General, during which he stated that there were still fourteen current employees of the department who bought their jobs under the Benedict administration. We were not previously informed of any such allegation, and only learned of Mr. West's statements as a result of subsequent media inquiries.

On January 15, 1988, I wrote to Mr. West objecting to his remarks without any notice to us and requesting information as to the identifies of the employees in question.

On January 21, 1988, Mr. West wrote to you with a list of 21 employees. This letter further noted that at least 7 of these employees had been identified in the previous prosecution of John Kerr, that only two of the named employees were believed to have directly made payment to Benedict or Kerr and that the remainder may not have known that their jobs had been purchased for them by others, and that the FBI investigation indicated that one person certainly did not know of the payment. The letter further requested "... that you keep these names

strictly confidential, not to use them for any type of media disclosures other than necessary to appropriate administrative proceedings, and make them available only to your most trusted employees on a need-to-know basis," and even enclosed copies of two federal court opinions addressing the ethical standards for identifying unindicted co-conspirators which "we all should follow."

On January 22, 1988, you wrote to Mr. West advising him that we saw no way to undertake an administrative investigation without endangering the confidentiality which Mr. West desired, and informing him that we would refrain from action until he advised us that the risk of disclosure would not jeopardize his investigation. No response was received for five months.

On June 21, 1988, Mr. West wrote to you to advise that we could now proceed with our investigation.

On June 27, 1988, I spoke to Mr. West by telephone to request any specific information that could be made available to assist our investigation, since no details of the allegations had yet been made known to us. Mr. West told me that he could provide excerpts from Kerr's statements to the FBI, but not grand jury testimony. He also advised me that he had "profound" statute of limitations problems with the three job selling intermediaries referred to, but not named, in his letter of January 21, and that he might be able to identify them and provide details of their actions to us. I also informed him that two of the persons named in the January letter (Favasuli and Larkin) had been fired under the Benedict administration, took their dismissals to grievance arbitration, and won reinstatement. When Mr. West expressed some concern that this might have been as a result of some deal that Benedict made to lose the case, I informed him that the department had been represented by the Office of Legal Counsel, Office of Administration, under Governor Thornburgh's administration, which Mr. West stated that he had not known. Mr. West advised me that he should have everything ready for us by the next afternoon.

On June 29, 1988, I called Mr. West because I had not heard from him. He told me that the detailed information would

probably not be ready until Tuesday, July 5, 1988, after the holiday weekend. However, the information was not made available then.

On July 12, 1988, Mr. West finally sent, by overnight express, a revised list of 21 employees which deleted the names of Harold Imber and Karol Danowitz and added Michael Schubert and Jean Mills, together with FBI memoranda summarizing various statements made by John Kerr and a letter from Supervisory Senior Resident Agent David Malarney to Mr. West that asserts a continued concern for discretion and the personal safety of John Kerr.

After receipt of these documents, I began a review of personnel and investigative records of the named individuals, as well as four more individuals identified in the documents provided but not named in the letters from Mr. West. The fact that many of the records were taken by the State Attorney General during the original Kerr investigation, and have not yet been returned, hampered this aspect of our review somewhat. However, I did notice certain matters which might allow a way for Mr. West to circumvent his problems with the federal statute of limitations.

On August 10, 1988, I wrote a letter to Mr. West enclosing a copy of my analysis of the applicability of the Pennsylvania extended statute of limitations relating to crimes committed by public employees during the course of their employment. The letter advised Mr. West that we were relying upon his prior representations that the State Attorney General had been fully apprised of the case in continuing with our administrative investigation of the allegations.

On August 18, 1988, employee Guido Alesi was interviewed in your office by yourself, me and Nick Ficco. No formal record of the interview was made because of Mr. Alesi's desire to consult with legal counsel, yet he did answer all questions presented to him. I have documented that interview from my own notes with a memorandum to the file.

INVESTIGATIVE FINDINGS

Beginning on September 16, 1988, Mr. Ficco and I conducted recorded interviews of each of the employees named in Mr. West's lists or otherwise identified in the information provided to us, except Favasuli and Larkin who had been reinstated by arbitration award dated July 17, 1984, and Jean Mills who resigned on August 15, 1986. No one refused to testify, or asserted the right to have counsel present (although all were advised of this right). The statements were obtained on the following dates:

09/16/88	Michael Schubert
09/19/88	Patrick Coyle
	James Police
09/20/88	Lucille Russell
	Robert Russell
09/21/88	Guido Alesi
09/22/88	Thomas Anderson
	James Melo
	Walter Speelman
	Rodney Weist
10/03/88	Gary Beswick
	James DiCosimo
	Beverly Esterman
	David Pantano
	Donald Ruggerio
	James Walsh
	Markos Xenakis
	Frank Zatta
10/06/88	Mitchell Carr
	Karol Danowitz
	John Weikel
10/07/88	Richard Walton
10/14/88	Louise Jurik

To arrive at useful numbers for purposes of the remainder of this report, I shall refer to 22 names listed by the U.S. Attorney (the 21 named in Mr. West's letter of July 12, plus Karol Danowitz who was dropped from the January list. There is no reason to include Harold Imber in the listing, although he was named in January, since is now in prison for his involvement). Of the 22 named employees, our finding are as follows:

One person, Jean Mills, resigned on August 15, 1986, and should not have been listed as a current employee. Obviously, we are unable to take any action against her.

Two employees, Francis Favasuli and J. Michael Larkin, had been named in Kerr's indictment and discharged from employment on November 17, 1983. However, their dismissal was reversed and changed to a thirty day suspension by grievance arbitration award entered July 17, 1984, and they were ordered to be reinstated with back pay from December 17, 1983. An appeal was initially filed to the Commonwealth Court, but that appeal was withdrawn in return for the union's written agreement that the award could not be used as precedent in any future cases.

Of the remaining 19 named employees, the information concerning ten of them indicates that others (parents, spouses, parents-in-law) paid to obtain their jobs. In the case of one, Karol Danowitz, even the federal authorities have stated in writing that she did not know that any bribe was paid to get her job (see Mr. West's letter of January 21, 1988). She is also the only one of the named employees who was interviewed by the U.S. Attorney's office or F.B.I. The rest have, likewise, denied paying for their positions and have denied any knowledge that anyone else paid a bribe on their behalf. Only two, Thomas Anderson and James Melo, had not been previously questioned by the Attorney General. Lucille Russell's husband, Robert Russell, who is a FA IV in the Bureau of Municipal Pension Audits (also known as Police and Fire Audits), and who was identified in the information provided by the federal government as paying for his wife's job although he is not on the list of named employees, even took a polygraph test at the request of the Attorney General's Office during the Kerr investigation and passed, as did Beverly Esterman. We can see no basis upon which to initiate any action, therefore, against these employees:

Thomas Anderson	Mitchell Carr
Karol Danowitz	Beverly Esterman
James Melo	Lucille Russell
Walter Speelman	James Walsh
John Weikel	Rodney Weist

In further support of this conclusion we note the existence of a number of factual errors contained in the information submitted by the federal authorities.

Mr. Anderson is alleged to have been hired as a FA I on June 4, 1979, at an annual salary of \$12,499, after his father paid Kerr \$3,000. However, Thomas Anderson was employed as a Temporary Administrative Assistant I on June 4, 1979, and resigned on August 24, 1979 to return to school. On December 19, 1979, he was reemployed as a temporary Administrative Assistant, converted to a wage employee on January 28, 1980, and not finally employed as a Field Auditor I until July 28, 1980, after he had received his bachelor's degree in accounting.

"Reds" Barbone, identified as the father-in-law of James C. Melo, Jr., in the supplied information, is not Mr. Melo's father-in-law. He is the husband of Mr. Melo's sister-in-law.

While such discrepancies may appear to be insubstantial on their face, they are highly relevant in determining the credibility of the allegations made by John Kerr and transmitted to us by the federal authorities, under the legal axiom of *falsus in uno, falsus in omnibus*. The successful passage of lie detector tests by Mr. Russell and Mrs. Esterman provide additional support to the applicability of that principle.

The eight of the remaining named employees are alleged to have made payment directly for their jobs or promotions. They are:

Gary Beswick	Patrick Coyne
James DiCosimo	Louise Jurik
David Pantano	Donald Ruggerio
Markow Xenakis	Frank Zatta

None of these people admitted to paying for their positions and we were unable to discover any other information which would corroborate the allegations made against them. Mr. Coyne's appointment had the backing of the Steelworkers union, and could likely constitute a political favor. Mr. Beswick's aunt and uncle exert substantial political influence in the Pittsburgh area. Mrs. Jurik's file discloses commendations for her audit work shortly before her promotion to FA III. Mr. DiCosimo was a former three-term Huntingdon County Commissioner and State Committee Executive Board member with substantial influence of his own, plus having bump-back rights to his former position with the A&P Company. Mr. Zatta was an

accounting graduate originally hired during Mr. Casey's administration as part of the effort to recruit accountants. Mr. Ruggerio attended Mr. Benedict's inauguration, but the \$1,000 paid at that time constituted the price of tickets for four people at \$250 each. Of this group, only Mr. Coyne was not interviewed by the state Attorney General during the Kerr investigation. There being no other information available, we are unable to substantiate any of the allegations concerning these eight people.

The remaining individual on the list of 22, Michael Schubert, is alleged to have served as a go-between or intermediary between John Kerr and Messrs. Coyne and Police. James Police was not named in the list, being identified by the federal authorities as a former employee of the department. As he is not, we interviewed him as well. Mr. Police, Mr. Schubert, and Mr. Coyne, all denied the allegations and no evidence was discovered to dispute their denials.

Besides Mr. Police and Mr. Russell, we were able to identify other department employees accused of wrongdoing by the federal authorities but not named in Mr. West's list. They are Guido Alesi and Richard Walton.

Mr. Walton admitted delivering \$1,000 to Mr. Benedict's 1977 inauguration, but in return for four tickets (for himself, Donald Ruggerio, Rick McGargle, and Cheryl Brobst), not in return for Mr. Ruggerio's subsequent employment as alleged. It should be noted that the law at that time did not limit cash contributions, require the identification of the donor, or otherwise make such a purchase of dinner tickets illegal. Mr. Walton was never interviewed by the Attorney General, U.S. Attorney, or either grand jury, despite the fact that the state authorities had investigated Mr. Ruggerio during the Kerr investigation.

Mr. Alesi admitted delivering cash to John Kerr in excess of the lawful amounts, but stated that he was unaware of the legal requirements and relied upon Kerr, as a lawyer, for legal guidance. He denied ever delivering money to help anyone get a job or promotion, and denied ever macing anyone. Mr. Alesi has also been questioned by both state and federal officers and grand juries, most recently on August 23, 1988, when he appeared before the federal grand jury. In his statements to us, Mr. Alesi was very open and candid about his political and

fundraising activities during the Benedict administration, which lends substantial credence to his averment that he was completely honest with both the state and federal grand juries. Nevertheless, he was never charged by the state and asserts that the U.S. Attorney has assured him that he is not a target of their investigation. He adamantly denies that any money was involved in his efforts to obtain jobs for James DiCosimo and Jean Mills, a denial that is reinforced by the political influence possessed by Mr. DiCosimo and Mrs. Mills in their own right as well as by the relationship which Mr. Alesi apparently had with Mr. Benedict and John Kerr. Solely on the basis of his cash deliveries to Kerr, however, disciplinary action might be sustainable by relying upon the legal principle that ignorance of the law is no excuse. In labor arbitrations, such legalistic positions are not always looked upon with favor, but since Mr. Alesi is a management employee he is susceptible to summary discharge without cause. While such an action may not be fair, it is, at least, within your legal power. Because of the publicity surrounding the "list of employees," however, I suggest extreme caution in the handling of any of Mr. Alesi's case, since a real possibility exists that he could successfully prosecute a wrongful discharge action if a jury believed that your action was based upon political considerations in light of the pending election, rather than as punishment for actual misconduct.

I would also call your attention to the fact that is not named in Mr. West's lists, and that a substantial question exists, therefore, that the limited use of the confidential materials provided would not extend to disclosure of his name, even as necessary to take administrative action. I would suggest that we continue to investigate the allegations concerning research the applicable case law, and obtain Mr. West's assurance that disclosure in his case would not impede whatever federal investigation occasioned his grand jury appearance in August.

SUMMARY

Of the 22 people listed by Mr. West in his letters, none of them have been proven to be guilty of the allegations. One resigned almost 2 years before first being named in Mr. West's letter of July 12, 1988. Two were discharged by Benedict, but reinstated by an arbitrator. Ten were, at worst, the unknowing and therefore innocent beneficiaries of bribes paid by family members. And no evidence can be found to substantiate the allegations concerning the nine employees claimed to have acted with knowledge.

Of the four people not named in the lists, but otherwise identified in the information provided in July, insufficient information is available to substantiate the allegations against three of them. The allegations concerning having been partly verified by his own admission, should be further examined and the law researched regarding the tort of wrongful discharge to determine if action should be initiated against him. In his case, we should also obtain the assurance of Mr. West that any action would not hinder the federal investigation for which he was called before the grand jury.

Max Weiner

. . . from Consumer Party

SOURCE: by STEPHEN DRACHLER, The Morning Call

DATELINE: HARRISBURG

AUDITOR GENERAL RACE HARSH
AL BENEDICT'S NAME REMAINS AT CENTER OF DEBATE
ELECTION 88

Al Benedict left office nearly four years ago, but his legacy as Pennsylvania's auditor general is the biggest issue in the re-election campaign of his successor.

Benedict's current address is a one-time monastery that is now a low-security federal prison near Johnstown. He's serving a six-year sentence for his role in a massive job selling scheme that also landed two of his former deputies in prison.

The scandal has provided ammunition to Allegheny County Commissioner Barbara Hafer, a Republican who is running a slashing, hard-nosed campaign against Benedict's successor, former Democratic congressman Don Bailey.

For his part, Bailey is running a low-key campaign, giving speeches to veterans groups and labor unions and attending political fund-raising functions across the state. He says he's achieved a "remarkable record" of accomplishment while serving as the taxpayers' fiscal watchdog.

While prosecutors have clearly said Bailey was not involved in the scandal, Hafer has loaded her verbal gun with phrases linking Bailey and Benedict and has run from press conference to press conference across the state, claiming that Bailey's administration is rife with corruption.

One of the bullets is the fact that Harold Imber, now jailed for selling jobs while working for Benedict, stayed on and was one of Bailey's top aides until he was indicted and pleaded guilty early this year.

Although none of the crimes Imber went to jail for were committed while Bailey was in office, Hafer contends, without offering any clear substantiation, that the job-selling that flourished under Benedict continued when Bailey took office.

Bailey has denied all of Hafer's allegations, including one that he has protected 20 employees who have remained on the payroll since buying their jobs during Benedict's reign. He decries Hafer for running a dirty campaign, and says she has been shooting blanks, but admits her confrontational tactics have hurt him.

A key element of Hafer's strategy is to control the campaign's agenda.

Much as George Bush has maintained a firm grip on the national perception of Michael Dukakis in this year's presidential campaign, Hafer has attempted to control the public view of Bailey.

It is a difficult task, challenging an incumbent in a statewide campaign for an office that competes every day for attention with the presidential candidates and a bevy of candidates seeking other offices from state senator to U.S. senator.

She's in Scranton on this gray, windy day, holding another news conference in the converted motel room that serves as the Lackawanna County Republican Committee's headquarters.

The subject: job selling. Again.

"Cleaning up that office, dispelling the cloud of suspicion that has hovered over its solid civil servants for more than five years, and restoring the credibility of that office . . . will be the prime objective of the Hafer administration," the 45-year-old candidate says as two local newspaper reporters watch her read a prepared statement in front of a single television camera.

The news conference was called to respond to Bailey's announcement earlier that week that he was taking no action against 28 people who Hafer claims either bought their jobs or were the benefactors of a bribe by someone else. Bailey said he couldn't take action against the workers without evidence. An internal investigation found none, he said.

"What was the depth of that investigation?" Hafer asks. "Well, his people talked to the individuals . . . and all them denied doing anything wrong."

Hafer skirts around the issue when asked if the 28 workers had a right not to be publicly named if there were no charges being filed against them. She says U.S. Attorney James West, who prosecuted Benedict and Imber, told her he would have not

given the names to Bailey if the people were not guilty. They weren't prosecuted, she says, because the federal probe was aimed at the sellers, not the purchasers of jobs.

"One of the 21 (who bought jobs) is Harold Imber who is now in jail," Hafer says as she adjusts her green-rimmed glasses. "There are 28 others. If the one that is in jail is on that list, what are we to expect of the 28 others . . . Bailey did nothing."

Hafer tells the reporters that she'd implement a code of conduct, replace incompetent workers and fire anyone who she thinks is tainted by the job-selling scandal. She would implement a 12-point program aimed at changing the image of the auditor general's office and improving its relationship with the governmental entities that it reviews.

There are snow flurries in the air at Seven Springs. There always are here at the end of October. The ski slopes of the western Pennsylvania resort will soon be clogged with brightly clad skiers.

But tonight the hotel and lodge is partially filled with young people attending a McDonald's restaurants convention and a group of middle-aged men and women who belong to the union representing State Store managers.

The Independent State Store Union has endorsed Bailey's re-election. His Harrisburg office lists the speech as a campaign event. Bailey stands before the group after its banquet, extolling the state-run liquor system and urging the workers to keep fighting to maintain it. After about 29 minutes, the speech ends. Bailey gets another standing ovation. He never mentions that he's running for re-election.

Afterwards, the 43-year-old Bailey stands in the hall talking with two reporters. He bristles when one suggests he's running a low-key campaign. Earlier in the day he had met Hafer in a Pittsburgh television studio to tape their only debate of the campaign.

"I don't agree with that . . . I do a tremendous amount of weekend and late-in-the-day traveling," Bailey says. "We do seminars. I have got veterans groups all over the state. Their support is universal. I have spoken to (Fraternal Order of Police)

groups on a number of occasions . . . To me, that's not low-key. That's a lot of hard, grassroots work."

Few interviews with Bailey are quick. And when the conversation turns to Hafer's attacks and accusations that his department is corrupt, his voice rises as he responds. Five minutes quickly turns to 10, then 15 and then 28.

"I have the same answer I had a few weeks ago. It's totally false. It's dishonest. It's inaccurate. The press corps knows it. Republican Attorney General LeRoy Zimmerman has dismissed these things out of hand," Bailey says.

"I think that it is a little sad . . . that we keep rehashing what was clearly known and well-known to be false," he adds. "There is absolutely nothing that has ever occurred during my administration that is wrong . . . I am sure you, as a reporter, see the lack of substance. It has all been XXXX and dirty."

The second part of her plan, which has been agreed upon by several well-known accounting firms, entails using "loaned executives" from the companies, which would provide accountants at no cost to the taxpayers. The accountants would meet with county, municipal and school district officials "to work on specific problems . . . in a non-political, non-threatening business way."

Hafer, who was visiting the area for the third time since her campaign to unseat Bailey began, said as part of her program to revamp the office, she would initiate a training program for municipal officials and others "so they know what to expect from the audits."

A registered nurse with 28 years of experience in health care and administration, said she also plans to establish an internship program for the auditor general's office for college students who plan to enter the field of finance.

Others plans she hopes to establish in effort to "clean up" the office and make it run more efficiently include:

- Establishment of "problem response team" which would provide immediate, short-term assistance and guidance for public agencies experiencing fiscal management problems.

- Establishment and enforcement of a "Code of Conduct" for office employees.

- Working with the state attorney general to initiate action against employees who she says participated in job selling or other illegal activities during Al Benedict's administration.

- Stopping on-site political activity. Hafer claims Bailey has raised more than \$200,000 through the solicitation of employees of the office.

- Conducting audits in a fair and impartial manner.

- Establishment of new standards of professionalism in the hiring of auditors, which will be adopted and administered directly by the auditor general.

- Development of an established protocol for the referral of criminal matters to law enforcement officials.

- Coordination of activities with other auditors as well as state and federal agencies able to lend assistance.

PHILADELPHIA INQUIRER

DATE; THURSDAY February 2, 1989

PAGE: A01

SECTION: LOCAL

GRAPHICS: PHOTO

SOURCE: By Jodi Enda, Inquirer Harrisburg Bureau

DATELINE: HARRISBURG

HAFER FIRES 18 SHE SAYS BOUGHT JOBS

Auditor General Barbara Hafer crisscrossed the state yesterday to announce that she had fulfilled a campaign promise by firing 18 employees whose state jobs were bought for prices ranging from \$1,000 to \$5,000.

Hafer, who took office 16 days ago, said her two-week review of files provided by the FBI and the U.S. Attorney's Office found "overwhelming evidence" that the 18 employees were hired in past years after they or their acquaintances paid \$1,000 to \$5,000 for the jobs.

"We're talking about either the individual approaching an intermediary or directly going to the office — someone in the office of the auditor general — and saying, 'I want a job. I understand I can purchase a job. What's the price?' and that person giving the price," she said.

A "menu" or "laundry list" gave a price for each new job and promotion, Hafer said.

Hafer, Pennsylvania's new fiscal watchdog, planned to spend two full days to make her announcement in six cities. She justified the trip, which was to cost about \$1,400, as a "cleanup on the campaign" and as a way to acquaint herself with outlying offices.

"This is my attempt to put the issue to rest," she said during the day's first news conference here, referring to her pledge to dismiss some workers.

She said she notified the 18 employees of their dismissals by letter yesterday morning. She declined to release their names, saying it could jeopardize the state's position should the employees decide to sue.

Two of the employees were in top management at the bureau level, and the rest were members of the American Federation of State, County and Municipal Employees. Hafer said. A spokesman for her office said that 10 of the 18 were based in Pittsburgh, five in Harrisburg and one each in Philadelphia, Altoona and Berwick in northwest Pennsylvania.

The job-selling scheme began in the 1970s and resulted in jail terms for former Auditor General Al Benedict and two of his aides. Hafer said yesterday that she had evidence that one employee — an administrative officer — was hired under her immediate predecessor, Don Bailey, but has since resigned. Bailey could not be reached for comment yesterday.

Hafer chastised Bailey during a bitter campaign last fall for failing to fire employees who bought their jobs, but Bailey said he had "not one legal leg to stand on."

Asked whether she thought Bailey was part of the scheme, Hafer said that both her office and the U.S. attorney in Harrisburg were continuing the investigation.

"I do not have at this time any specific knowledge that Don Bailey was directly involved but we're tracking the money flow," she said.

Of the 18 employees who were fired, Hafer said 16 admitted that they bought their jobs.

"Two people said that they were not aware of it," she said. "It is hard to believe on the evidence that they weren't aware.

When they were told that someone else, and someone that they knew very well, bought their job, they said that's possible."

Hafer said her action yesterday was sure to boost morale.

"There's been a cloud of suspicion over this office for so many years," she said. "People that leave this office have problems finding jobs. Who's going to hire these people?"

After the Harrisburg news conference, Hafer, press secretary Chuck Morse and another spokesman, Jim Koval, drove to Philadelphia for a repeat performance. Hafer and Morse took a commercial plane to Pittsburgh, where they held a third news conference.

Today, they have scheduled similar news conferences in Erie, State College and Scranton.

Koval said the bulk of the \$1,400 cost was for a state plane to fly today from Pittsburgh to Erie, State College, Scranton and Harrisburg. Commercial air fare from Philadelphia to Pittsburgh cost \$126 apiece for Hafer and Morse, he said.

"It's actually cheaper to fly commercially, except the commercial schedules would not permit us to hit all those cities within the media times, if you will," Koval said. "And you cannot get from Wilkes-Barre (Scranton's airport) to Harrisburg without going to Philadelphia."

Hafer and Morse were to spend last night in Pittsburgh.

Hafer lives in Pittsburgh, but Koval said she would spend the night at the Weston William Penn Hotel, at a government rate of \$55. He said that at least one of Hafer's homes was so far from the airport that she "would have had to get up at 5 o'clock or earlier" to catch her morning flight. Morse said he was spending the night at his house.

Hafer said the trip would wrap up campaign issues and help her in her new job.

"I have not visited the Pittsburgh, Erie, Scranton, Philadelphia offices. I have been in Harrisburg and this is a time for me to go there and see these people directly and get acquainted with them."

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES C. MELO, JR. : CIVIL ACTION
:
vs. :
:
BARBARA HAFFER :
and :
JAMES J. WEST, ESQUIRE : NO. 89-2935

AFFIDAVIT OF PLAINTIFF JAMES C. MELO, JR.

COMMONWEALTH OF PENNSYLVANIA :
SS
COUNTY OF BUCKS :

JAMES C. MELO, JR. being duly sworn according to law,
deposes and states:

1. To the best of my knowledge, no money was paid by
"Reds" Barbone to influence my promotion from Field Auditor
I to Field III.

2. I did not learn that Mr. Kerr was alleging that Mr.
Barbone made a payment to influence my promotion from Field
Auditor I to Field Auditor III until 1988. Upon learning of the
allegation, I spoke with Mr. Barbone and he denied that any
such payment had been made. Mr. Kerr is a convicted felon and
it is much more reasonable to believe Mr. Barbone than Mr.
Kerr.

3. In 1981, I was promoted from Field Auditor III to Field
Auditor IV and I served in that capacity until Ms. Hafer fired me
on February 1, 1989. I am not aware of any allegation of "taint"
in connection with my promotion from Field Auditor III to Field
Auditor IV.

4. From the time I first began employment with the Office
of the Auditor General in 1977 until the time Ms. Hafer fired me
on February 1, 1989, I performed my duties in a competent and
satisfactory manner. I did not receive any unfavorable evalua-
tions and my work was not criticized. I was paid at the standard

wage scale for persons at my job classification and length of
service. My employer received its "money's worth" in that I was
paid at the standard compensation scale and performed my
duties in a competent and satisfactory manner during my entire
term of employment with the Office of the Auditor General.

James C. Melo, Jr.
JAMES C. MELO, JR.

Sworn to and subscribed before
me this 5th day of July, 1989

Eileen Jennifer Weiser
NOTARY PUBLIC

NOTARIAL SEAL
EILEEN JENNIFER WEISER, Notary Public
Bensalem Twp., Bucks County
My Commission Expires Oct. 24, 1992

COMMONWEALTH OF PENNSYLVANIA :
SS
COUNTY OF WASHINGTON :

I, LOUISE JURIK, being duly sworn according to law,
depose and state:

1. I was employed in the Department of Auditor General
("Department") from August 1972 to February 1989.

2. During my employment, I was a member of the Amer-
ican Federation of State and Municipal Employees
("AFSCME"). My salary for employment with the Department
was determined in accordance with the applicable collective
bargaining agreement.

3. I performed my duties in a satisfactory manner and my
job performance met all of the requirements of my position.

4. While employed in the Department, I was an employee
of the Commonwealth of Pennsylvania. Further, it was the
Commonwealth of Pennsylvania that was the employer-party to
the collective bargaining agreement.

5. Because I performed my duties in a satisfactory manner and was paid in accordance with the collective bargaining agreement, my employer, the Commonwealth, did not suffer any financial injury as a result of my employment.

6. In 1988, I learned that an allegation was made that one John Lignelli paid money to John Kerr to influence a promotion for me. I was not aware of any such payment or even an allegation of payment prior to or at the time of my promotion which occurred on February 15, 1983.

7. It is preposterous to allege that John Lignelli would have made any payment on my behalf for a promotion for me. Mr. Lignelli and I have been public enemies for many years including 1983, many years prior thereto and many years subsequent thereto.

8. The promotion which I received in 1983 was first posted on February 2, 1983. A copy of the posting notice is attached hereto and marked Exhibit "1." I applied for the promotion and my application was granted on February 15, 1983. A copy of my application is attached hereto and marked Exhibit "2." A copy of the granting of the application is attached hereto and marked Exhibit "3."

9. Mr. Kerr resigned on February 4, 1983, only two days after the promotion was posted. There was simply not enough time between the date the promotion was posted and the date Mr. Kerr resigned for any transaction to have occurred between Mr. Lignelli and Mr. Kerr on my behalf. Not only was I not aware of any payment, it is my firm belief that no such payment was made.

10. Following the termination of my employment, I applied for unemployment compensation. The Department opposed my request and alleged that I committed wilful misconduct in connection with a payment being made for my 1983 promotion. A hearing was held and as a result of the hearing, I was awarded unemployment compensation. Attached hereto is a copy of the Notice of Determination of the Bureau of Unemployment Compensation.

11. I consider it ridiculous for Ms. Hafer to claim, on behalf of the Commonwealth, a financial injury. I have always performed my duties in a satisfactory manner and was paid in

accordance with the wage scale set in the collective bargaining agreement between the Commonwealth and AFSCME. The Commonwealth has always received its "money's worth" for my labors.

Louise Jurik
LOUISE JURIK

Sworn to and subscribed before
me this 10th day of August,
1989.

Evelyn P. Dolnack
NOTARY PUBLIC

NOTARIAL SEAL
EVELYN P. DOLNACK, Notary Public
Donora, Washington County, PA
My Commission Expires Feb. 10, 1993

COMMONWEALTH OF PENNSYLVANIA :

: SS

COUNTY OF :

I, JAMES DiCOSIMO, being duly sworn according to law, depose and state:

1. I was employed in the Department of the Auditor General ("Department") from January 1980 to February 1989.

2. During my employment, I was a member of the American Federation of State and Municipal Employees ("AFSCME"); My salary for employment with the Department was determined in accordance with the applicable collective bargaining agreement.

3. I performed my duties in a satisfactory manner and my job performance met all of the requirements of my position.

4. While employed in the Department, I was an employee of the Commonwealth of Pennsylvania. Further, it was the Commonwealth of Pennsylvania that was the employer-party to the collective bargaining agreement.

5. Because I performed my duties in a satisfactory manner and was paid in accordance with the collective bargaining agreement, my employer, the Commonwealth, did not suffer any financial injury as a result of my employment.

6. In late 1983, I learned of an allegation that I made a cash payment to Guido Alesi for Mr. Alesi to give to John Kerr to influence my employment with the Department. I did not make such a payment and, of course, I have no knowledge of anything that transpired between Mr. Alesi and Mr. Kerr.

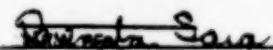
7. The Commonwealth has been aware of the allegation that money was paid in connection with my employment since 1983. In 1983, I testified before the grand jury concerning the allegation that a payment was made and I denied the allegation. I believe that Mr. Alesi also testified but I have no knowledge of the subject matter of his testimony. Neither Mr. Alesi nor I were indicted.

8. It is ridiculous for Barbara Hafer to claim, as she has in her Counterclaim, that I committed any fraud or misrepresentation in connection with the allegation that a payment was made by or through me in connection with my employment. This

allegation surfaced in 1983 and lead to my testimony before the grand jury. The nature and substance of the allegation has been public knowledge since 1983. It is equally ridiculous for Ms. Hafer to claim, on behalf of the Commonwealth, a financial injury. I have always performed my duties in a satisfactory manner and was paid in accordance with the wage scales set in the collective bargaining agreement between the Commonwealth and AFSCME. The Commonwealth got full value for its employment dollar.


JAMES DiCOSIMO

Sworn to and subscribed
before me this 3rd day
of August, 1989.


NOTARY PUBLIC

NOTARIAL SEAL
BRENDA SAIA, NOTARY PUBLIC
WAYNE TOWNSHIP, MIFFLIN COUNTY
MY COMMISSION EXPIRES JULY 20, 1992
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA :
 : SS
 COUNTY OF CUMBERLAND :

I, KAROL DANOWITZ, being duly sworn according to law, depose and state:

1. I was employed in the Department of the Auditor General ("Department") from December 1980 to February 1989.

2. During my employment, I was a member of the American Federation of State and Municipal Employees ("AFSCME"). My salary for employment with the Department was determined in accordance with the applicable collective bargaining agreement.

3. I performed my duties in a satisfactory manner and my job performance met all of the requirements of my position.

4. While employed in the Department, I was an employee of the Commonwealth of Pennsylvania. Further, it was the Commonwealth of Pennsylvania that was the employer-party to the collective bargaining agreement.

5. Because I performed my duties in a satisfactory manner and was paid in accordance with the collective bargaining agreement, my employer, the Commonwealth, did not suffer any financial injury as a result of my employment.

6. In the spring of 1988, I learned that an allegation was made that back in 1980, my ex-husband, Harvey Danowitz, made a cash payment, through an intermediary, to someone in the Department to influence my employment with the Department. I was not aware of any such payment or even an allegation of payment prior to 1988. When I heard about the allegation, I asked my ex-husband if he had made such a payment and he said that no such payment had been made. Accordingly, I formed the belief that no such payment had been made and I continue to the present day to be of such a belief.

7. In the spring of 1988, I was interviewed by the FBI concerning my knowledge of whether or not a payment had been made to influence my employment. I told the FBI that I had no knowledge of such a payment.

8. Subsequent to the termination of my employment, I filed for unemployment compensation. The Department opposed my request and claimed that I had committed wilful misconduct. A hearing was held and as a result of the hearing, it was determined that I was entitled to unemployment compensation benefits. Attached hereto and marked Exhibit "1" is a copy of the Findings of Fact, Discussion and Determination of the Pennsylvania Unemployment Compensation Bureau.

9. I consider it ridiculous for Barbara Hafer to claim, as she has in her Counterclaim, that I committed fraud and misrepresentation. There is absolutely no evidence that I knew of the alleged payment and, as pointed out in the decisions of the Unemployment Compensation Bureau, "proof" that the payment was even made is based upon hearsay and double hearsay. It is equally ridiculous for Ms. Hafer to claim, on behalf of the Commonwealth, that the Commonwealth suffered any financial injury I have always performed my duties in a satisfactory manner and was paid in accordance with the wage scale set in the collective bargaining agreement between the Commonwealth and AFSCME. The Commonwealth has always received its "money's worth" for my work.

Karol Danowitz
 KAROL DANOWITZ

Sworn to and subscribed
 before me this 18th day
 of August, 1989.

Ardith Buffington
 NOTARY PUBLIC

NOTARIAL SEAL
 ARDITH BUFFINGTON, Notary Public
 Lwr. Allen Twp., Cumberland County
 My Commission Expires Nov. 21, 1989



Commonwealth of Pennsylvania
Office of the Auditor General
Harrisburg 17120

February 14, 1989

Ms. Shelley G. Livingood
50 East Muirfield Drive
Reading, PA 19607

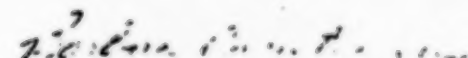
Dear Ms. Livingood:

This letter is to inform you that it has been determined that all Field Auditor I's, probationary status, will be terminated, effective at the close of business, March 15, 1989. This action is the result of contemplated changes in departmental policy.

Thank you for your service to the Department of the Auditor General and best wishes for your future endeavors.

You will be contacted by the Personnel Office regarding your rights on separation and the surrender of departmental property.

Sincerely,


Barbara Christianson
Acting Personnel Director



AFSCME®

American Federation of State, County, and
Municipal Employees • AFL-CIO
Dauphin County Pennsylvania Public Employees
District Council 90
4031 Executive Park Drive • Harrisburg, Pennsylvania
17111-1599 • 717-564-9312

March 30, 1989

Shelly G. Livingood
50 East Muirfield Drive
Reading, Pa. 19607

Dear Ms. Livingood:

Although I have strong exception to your letter dated March 15, 1989, I have enclosed a copy of the Collective Bargain Agreement as well as a Grievance Form.

Now let me address several points you made in your letter. First, I never told you that you would not be allowed to file a grievance because of any "deal", but rather because you were probationary.

Secondly, I had no knowledge of your "original hired date" prior to our conversation in February 1989, so I will not be held responsible for information you got prior to that. In fact, I have no way of knowing whether you would have been hired full time anyway.

In terms of yours being a political firing that is exactly what it is. However, since you had less than six (6) months with the Agency you were still considered on probation. In that regard, the Union could not save your job. Article 29, Section 5.

Ms. Livingood you were, or should have been fully aware of the political climate with the Auditor General when you were employed, and I don't appreciate you trying to blame the Union for what was "politics as usual".

In unity,


Fred Davis
Council Director

FD: dfm
cc: Lynne Vergot
Enclosures

Shelly G. Livingood
 March 30, 1989
 Page - 2 -

P.S. By the way you fail to provide a return mailing address,
 which is the reason for the delay in answering your letter.

UNEMPLOYMENT COMPENSATION - NOTICE OF DETERMINATION

Last Date to Appeal May 2, 1989
 Claimant: James C. Melo, Jr.
 1054 Neshaminy Valley Dr.
 Bensalem, PA 19020
 SS#: 201-32-4293
 Employer: Commonwealth of Penna.
 Department of the
 Auditor General
 Room 325 Finance Bldg.
 Harrisburg, PA 17121

Findings of Fact

1. The claimant last worked for the Department of the Auditor General on February 1, 1989 at which time he was discharged for involvement in a 1983 job buying and/or promotion buying scheme.
2. The claimant was last employed as a Field Auditor IV at a final annual salary of \$33,000.
3. The employer states that the claimant's father-in-law, Mr. "Reds" Barbone, made a cash payment of \$2,700 to representatives of the Department of the Auditor General to obtain a promotion for the claimant.
4. The claimant denies any knowledge of such a payment.
5. An investigation into the job buying and/or job promotion scheme conducted by the Federal Bureau of Investigation (FBI) and in July 1988, the employer received the FBI's report.
6. No immediate disciplinary action was taken subsequent to the receipt of the FBI report of July 1988.

Discussion

Section 3 of the Pennsylvania Unemployment Compensation Law requires that unemployment reserves be used for the benefit of persons "unemployed through no fault of their own."

Additionally, Section 402(e) of the Law mandates that "an individual will be ineligible for any week in which his unemployment is due to his discharge or temporary suspension from work for willful misconduct in connection with his work . . ."

While the phrase "willful misconduct" is not defined in the statute, the Commonwealth Court in *Kentucky Fried Chicken v. UCBR.*, 10 Pa Commonwealth Court 90, 309 A. 2d 165 (1973) stated that for behavior to constitute willful misconduct it must evidence: (1) the wanton and willful disregard for the employer's interests; (2) the deliberate violation of rules; (3) the disregard of standards of behavior which an employer can rightfully expect of an employee; or, (4) negligence which manifests culpability or wrongful intent.

In *Tundel v. UCBR.*, 44 Pa Commonwealth Court 312, 404 A. 2d 434 (1979), the Commonwealth Court found that "an incident of willful misconduct cannot be so temporally remote from the ultimate dismissal and still form the basis for a denial of benefits."

While the employer's right to discharge the claimant is certainly not in question, it must be noted that benefits cannot be denied absent the employer establishing the existence of willful misconduct.

The claimant denies any knowledge of the events which led to the February 1, 1989 discharge. No information has been provided which directly implicates the claimant or establishes the claimant's knowledge of these events. The employer's allegations are based on a report completed by the Federal Bureau of Investigation. That report, which indicates that it does not represent conclusions or recommendations, is wholly comprised of hearsay. No first-hand testimony has been introduced by the employer that would prove the involvement of the claimant.

In addition, although the employer has provided written materials detailing the allegations against the claimant, the allegations of job buying activities relate to actions of the claimant's father-in-law rather than to actions of the claimant. In any event, the actions occurred more than six years before the claimant's termination and are so temporally remote that they can not form the basis for a denial of benefits.

The employer has failed to carry its burden of proving either willful misconduct or that the claimant is unemployed through his own fault. The employer has not introduced any competent evidence to show that the claimant willfully engaged in action which was against the employer's interest or that any action of the claimant occurred at a point in time sufficiently close to the termination of the claimant to constitute grounds for denying benefits.

Therefore, the employer has not met the requisite burden under either Section 3 or 402(e) needed to deny benefits.

Determination

In accordance with Sections 3 and 402(e) of the Law, the claimant is eligible for benefits beginning with week ending February 4, 1989.



BUCB&A
Representative

April 17, 1989
Date Mailed

Appeal Instructions

Under Section 501(e) of the Pennsylvania Unemployment Compensation Law, this determination becomes final unless an appeal is timely filed. If you wish to file an appeal, a form may be obtained from any office of the Bureau of Unemployment Compensation, Benefits and Allowances. Appeals may be filed in person or by mail with the local office that issued the determination. If an appeal is filed by mail, it must be post-marked on or before the last day to appeal, as shown above, and forwarded to:

Bureau of UC Benefits & Allowances
Adjudication Section
Room 408 Labor and Industry Building
Harrisburg, PA 17121

UNEMPLOYMENT COMPENSATION — NOTICE OF DETERMINATION

Last Date to Appeal May 2, 1989

Name: Lucille J. Russell

2023 Fifth Ave.

Altoona, PA 16602

SS#: 193-36-9776

Employer: Commonwealth of Penna.

Department of the

Auditor General

Room 325 Finance Bldg.

Harrisburg, PA 17121

Findings of Fact

1. The claimant last worked for the Department of the Auditor General on February 1, 1989 at which time he was discharged for involvement in a job buying scheme in 1980.

2. The claimant was last employed as a Field Auditor III at a final annual salary of \$30,000.

3. The claimant was hired January 14, 1980 as a Field Auditor I.

4. The employer states that the claimant's husband made a \$1,000 cash payment in 1980 to representatives of the Department of the Auditor General to secure this employment.

5. The claimant acknowledges a contribution to the campaign fund, but denies that the purpose of the payment was to purchase a job.

6. An investigation into the job buying scheme by the Federal Bureau of Investigation (FBI) was initiated and in July, 1988, the employer received the FBI's report.

7. The FBI report is based predominantly upon the testimony of a former "Executive Deputy to the Auditor General" and that testimony was itself based upon information provided by another former Auditor General employee.

8. No immediate disciplinary action was taken by the employer subsequent to the receipt of the FBI report of July, 1988.

9. On January 9, 1989, then Auditor General Don Bailey, advised the claimant that "our findings are inconclusive in the sense that we could not find any evidence to corroborate the information concerning you . . . even the information given the Department of the Auditor General by federal authorities indicated that you were entirely innocent of any knowledge of an alleged impropriety by someone on your behalf."

Discussion

Section 3 of the Pennsylvania Unemployment Compensation Law requires that unemployment reserves be used for the benefit of persons "unemployed through no fault of their own."

Additionally, Section 402(e) of the Law mandates that "an individual will be ineligible for any week in which his unemployment is due to his discharge or temporary suspension from work for willful misconduct in connection with his work. . . ."

While the phrase "willful misconduct" is not defined in the statute, the Commonwealth Court in *Kentucky Fried Chicken v. UCBR*, 10 Pa Commonwealth Court 90, 309 A.2d 165 (1973) stated that for behavior to constitute willful misconduct it must evidence: (1) the wanton and willful disregard for the employer's interests; (2) the deliberate violation of rules; (3) the disregard of standards of behavior which an employer can rightfully expect of an employee; or, (4) negligence which manifests culpability or wrongful intent.

In *Tundel v. UCBR*, 44 Pa Commonwealth Court 312, 404 A.2d 434 (1979), the Commonwealth Court found that "an incident of willful misconduct cannot be so temporally remote from the ultimate dismissal and still form the basis for a denial of benefits."

While the employer's right to discharge the claimant is certainly not in the question, it must be noted that benefits cannot be denied absent the employer establishing the existence of willful misconduct.

The claimant denies any knowledge of the events which led to the February 1, 1988 discharge. No information has been provided which directly implicates the claimant or establishes the claimant's knowledge of these events. The employer's

allegations are based on a report completed by the Federal Bureau of Investigation. That report, which indicates that it does not represent conclusions or recommendations, is wholly comprised of hearsay. No first-hand testimony has been introduced by the employer that would prove the involvement of the claimant.

In addition, although the employer has provided written materials detailing the allegations against the claimant, the allegations of job buying activities relate to actions of the claimant's husband rather than to actions of the claimant. In any event, the actions occurred more than nine years before the claimant's termination and are so temporally remote that they can not form the basis for a denial of benefits.

The employer has failed to carry its burden of proving either willful misconduct or that the claimant is unemployed through her own fault. The employer has not introduced any competent evidence to show that the claimant willfully engaged in action which was against the employer's interest or that any action of the claimant occurred at a point in time sufficiently close to the termination of the claimant to constitute grounds for denying benefits.

Therefore, the employer has not met the requisite burden under either Section 3 or 402(e) needed to deny benefits.

Determination

In accordance with Sections 3 and 402(e) of the Law, the claimant is eligible for benefits beginning with week ending February 4, 1989.


BUCB&A Representative

April 17, 1989

Date Mailed

Appeal Instructions

Under Section 501(e) of the Pennsylvania Unemployment Compensation Law, this determination becomes final unless an appeal is timely filed. If you wish to file an appeal, a form may be obtained from any office of the Bureau of Unemployment Compensation, Benefits and Allowances. Appeals may be filed

in person or by mail with the local office that issued the determination. If an appeal is filed by mail, it must be post-marked on or before the last day to appeal, as shown above, and forwarded to:

Bureau of UC Benefits & Allowances
Adjudication Section
Room 408 Labor and Industry Building
Harrisburg, PA 17121

UNEMPLOYMENT COMPENSATION — NOTICE OF DETERMINATION

Last Date to Appeal May 1, 1989

Claimant: Walter W. Speelman

6220 Bedford St.

Harrisburg, PA 17111

SS#: 196-48-2825

Employer: Commonwealth of Penna.

Department of the

Auditor General

Room 325 Finance Bldg.

Harrisburg, PA 17121

Findings of Fact

1. The claimant last worked for the Department of the Auditor General on February 1, 1989 at which time he was discharged for involvement in a job buying scheme in 1983.

2. The claimant was last employed as a Liquor Examiner II at a final annual salary of \$24,646.

3. The claimant was hired September 22, 1980 as a Liquor Examiner I.

4. The employer states that the claimant's mother-in-law, Mrs. Rachael Marte, made a \$1,500 cash payment in 1980 to representatives of the Department of the Auditor General, to secure this employment.

5. The claimant denies any prior knowledge of this payment or of the "job buying."

6. Following an investigation into the "job buying", the claimant was suspended in November, 1983.

7. In December, 1983 the claimant was reinstated to his position with the Department of the Auditor General and no further disciplinary action was taken by the employer until the claimant was discharged in 1989.

8. An additional investigation into the job buying scheme by the Federal Bureau of Investigation (FBI) was initiated and in July, 1988, the employer received the FBI's report.

9. The FBI report is based predominantly upon the testimony of a former "Executive Deputy to the Auditor General"

and that testimony was itself based upon information provided by another former Auditor General employee.

10. No immediate disciplinary action was taken by the employer subsequent to the receipt of the FBI report to discharge the claimant.

Discussion

Section 3 of the Pennsylvania Unemployment Compensation Law requires that unemployment reserves be used for the benefit of persons "unemployed through no fault of their own."

Additionally, Section 402(e) of the Law mandates that "an individual will be ineligible for any week in which his unemployment is due to his discharge or temporary suspension from work for willful misconduct in connection with his work. . . ."

While the phrase "willful misconduct" is not defined in the statute, the Commonwealth Court in *Kentucky Fried Chicken v. UCBR*, 10 Pa Commonwealth Court 90, 309 A.2d 165 (1973) stated that for behavior to constitute willful misconduct it must evidence: (1) the wanton and willful disregard for the employer's interests; (2) the deliberate violation of rules; (3) the disregard of standards of behavior which an employer can rightfully expect of an employee; or, (4) negligence which manifests culpability or wrongful intent.

In *Tundel v. UCBR*, 44 Pa Commonwealth Court 312, 404 A.2d 434 (1979), the Commonwealth Court found that "an incident of willful misconduct cannot be so temporally remote from the ultimate dismissal and still form the basis for a denial of benefits."

While the employer's right to discharge the claimant is certainly not in the question, it must be noted that benefits cannot be denied absent the employer establishing the existence of willful misconduct.

The claimant denies any knowledge of the events which led to the February 1, 1988 discharge. No information has been provided which directly implicates the claimant or establishes the claimant's knowledge of these events. The employer's allegations are based on a report completed by the Federal Bureau of Investigation. That report, which indicates that it does

not represent conclusions or recommendations, is wholly comprised of hearsay. No first-hand testimony has been introduced by the employer that would prove the involvement of the claimant.

In addition, although the employer has provided written materials detailing the allegations against the claimant, the allegations of job buying activities relate to actions of the claimant's mother-in-law rather than to actions of the claimant. In any event, the actions occurred more than six years before the claimant's termination and are so temporally remote that they can not form the basis for a denial of benefits.

The actions leading to the claimant's dismissal took place in October, 1983. In November, 1983 the employer took prompt action in discharging the claimant. The claimant was reinstated, however, in December, 1983. During the remainder of his employment, no further action was taken, despite the fact that the employer received the FBI report in July of 1988. The discharge of February, 1989 is based on these same events. Furthermore, the claimant's reinstatement serves to indicate that the employer acknowledged that the claimant's behavior could not form the basis for the discharge. These same circumstances can not be resurrected to support a denial of benefits.

The employer has failed to carry its burden of proving either willful misconduct or that the claimant is unemployed through her own fault. The employer has not introduced any competent evidence to show that the claimant willfully engaged in action which was against the employer's interest or that any action of the claimant occurred at a point in time sufficiently close to the termination of the claimant to constitute grounds for denying benefits.

Therefore, the employer has not met the requisite burden under either Section 3 or 402(e) needed to deny benefits.

Determination

In accordance with Sections 3 and 402(e) of the Law, the claimant is eligible for benefits beginning with week ending February 4, 1989.


BUCB&A Representative

April 14, 1989

Date Mailed

Appeal Instructions

Under Section 501(e) of the Pennsylvania Unemployment Compensation Law, this determination becomes final unless an appeal is timely filed. If you wish to file an appeal, a form may be obtained from any office of the Bureau of Unemployment Compensation, Benefits and Allowances. Appeals may be filed in person or by mail with the local office that issued the determination. If an appeal is filed by mail, it must be post-marked on or before the last day to appeal, as shown above, and forwarded to:

Bureau of UC Benefits & Allowances
Adjudication Section
Room 408 Labor and Industry Building
Harrisburg, PA 17121

5. On January 15, 1988, immediately after the guilty plea of former Auditor General Benedict to RICO charges arising out of the sale of state jobs and contracts, I received a letter from the new Auditor General of Pennsylvania, Don Bailey. In this correspondence, a copy of which is attached as Exhibit A, Mr. Bailey requested that we identify those Auditor General employees implicated in this job buying scheme. According to his letter, Mr. Bailey needed this information, so that, "[a]s a responsible public official," he could "take appropriate action on a case-by-case basis, against any employees who is accused or

seriously suspected of criminal wrongdoing". Mr. Bailey's correspondence further requested that we provide this information to him "not later than Friday, January 22, 1988."

6. Following receipt of Mr. Bailey's January 15 letter, I consulted with the various state officials involved in this investigation and representatives of the Federal Bureau of Investigation and the Internal Revenue Service regarding this request. Recognizing that Mr. Bailey, as Auditor General, had a legitimate interest in "tak[ing] appropriate action . . . against any employee who is accused or seriously suspected of criminal wrongdoing", it was agreed by all that a limited disclosure of information should be made to him. It should be noted that this course of action was consistent with the longstanding practice that existed in this particular investigation. Indeed, during the early stages of this investigation (1980-1982) numerous Auditor General employees (between twenty and thirty) that purchased their jobs were identified and almost all were terminated based on their participation in the scheme by then Auditor General Benedict. Moreover, it is the policy of the United States Attorney's Office for the Middle District of Pennsylvania to cooperate with state investigative and regulatory agencies by providing information under circumstances where the disclosure will not harm a continuing federal interest and can be legally made. It was decided that this was a situation meriting disclosure consisting of the names of twenty-one (21) Auditor General Office employees who had allegedly been hired or received promotions as a result of payments ultimately directed to senior officials in the Auditor General's office. The list of involved employees was prepared and checked by FBI Agents of the Harrisburg Resident Agency.

7. Before making any disclosure to Mr. Bailey, however, I assured myself that the limited disclosure of this information would be consistent with applicable federal laws. Thus, I strictly limited this disclosure to non-grand jury information, in order to avoid any inappropriate disclosure of matters occurring before the grand jury. The mechanics of preparing this list were as follows: First, the Auditor General's Office of Pennsylvania generated a computer print-out showing all current employees. The FBI agents conducting the investigation then compared that

print-out to the information obtained in debriefings of former First Deputy Auditor General John Kerr and former Auditor General Benedict, a source of information independent of the grand jury. Present employees who had payments made on their behalf were thus identified and their names were placed on the list to be disclosed to Auditor General Bailey pursuant to his letter of January 5, 1988.

8. On January 21, 1988 I responded in writing to Mr. Bailey's request for the names of those current Auditor General employees implicated in the job and promotion selling scheme. In my January 21 correspondence to Mr. Bailey, a copy of which is attached as Exhibit B, I provided Mr. Bailey with the names of these twenty-one (21) individuals provided to me by the FBI. I also noted for Mr. Bailey that the names of at least seven of these individuals were already a matter of public record from previous statewide investigative grand jury proceedings I had concluded between 1980 and 1982 as the Deputy Director of the Office of Criminal Law Enforcement. I further cautioned Mr. Bailey that he "should not presume" that any of these individuals had admitted to criminal misconduct, or even that these individuals were aware that their jobs or promotions had been purchased for them. I also requested that Mr. Bailey "keep these names strictly confidential (and) not use them in any type of media disclosures other than necessary to appropriate administrative proceedings."

9. On January 22, 1988 Mr. Bailey replied to my January 21 correspondence. In his January 22 letter, a copy of which is enclosed as Exhibit C, Mr. Bailey advised me that the Auditor General's office was deferring any administrative or disciplinary action in order not to prejudice our ongoing criminal investigation. I had not requested such a delay in proceedings and, in fact, I was surprised since the people involved in the investigation contemplated prompt administrative action by Bailey when the 21 names were made available.

10. On June 17, 1988 one of the principals in this job-buying scheme, Harold Imber, entered a guilty plea to federal racketeering and other charges. Accordingly, on June 21, 1988, I informed Mr. Bailey that "there is no longer any reason for you to refrain from taking appropriate action against the twenty-one

individuals identified to you in my letter of January 21, 1988". See Exhibit D. At the request of Mr. Bailey's counsel, I asked the FBI to determine if they could provide the Auditor General's office with an additional, limited disclosure of information on July 12, 1988. This disclosure, a copy of which is attached as Exhibit E, consisted of 21 "letterhead memoranda" prepared by the Federal Bureau of Investigation which related to this investigation. The release of these "letterhead memoranda", as opposed to actual FBI interview reports, was reviewed and sanctioned by FBI legal counsel.

11. The disclosures described in paragraphs 5 through 10, *infra*, constitute the only releases of information relating to the identities of those individuals implicated in this job-buying scheme which I sanctioned or participated in making. Contrary to the assertions contained in the Plaintiff's Complaint I did not disclose the identities of these individuals to Barbara Hafer while she was a candidate for the Office of Auditor General. Indeed, I specifically declined to provide the information to Ms. Hafer on two separate occasions as summarized in paragraphs 12 through 17 *infra*.

12. On October 4, 1988 I received a letter from Charles Lewis, the Campaign Manager for Barbara Hafer, who was at that time running for election as Auditor General of Pennsylvania. In his correspondence, a copy of which is attached as Exhibit F, Mr. Lewis simply reported allegations of criminal misconduct which had been received by him during the campaign.

13. On October 7, 1988 I received a letter from Barbara Hafer, a copy of which is attached as Exhibit G. In this correspondence, Ms. Hafer provided further information relating to the allegations previously reported to my office by Mr. Lewis. Ms. Hafer's letter also requested that I provide her with the names of those individuals whom I had previously identified to Mr. Bailey in January of 1988 and set forth several arguments in support of this position.

14. On or about October 18, 1988 I had a conference telephone conversation with Mr. Lewis and Ms. Hafer during which I informed them that I was in the process of preparing a letter indicating that notwithstanding the arguments made in

their October 7, 1988 letter to me, I could not provide the requested information since Ms. Hafer was merely a candidate for the Auditor General's office while Mr. Bailey was actually the Auditor General of Pennsylvania.

15. On October 19, 1988 I responded to Ms. Hafer's request for the names of these individuals. In my October 19 letter, a copy of which is attached as Exhibit H, I stated that:

"I have also thoroughly considered your request to have the names of the 21 individuals that I identified in January of 1988 for Auditor General Bailey as job purchasers made available to you, and regret I have concluded that is impossible at the present time. This information was gathered during an official investigation by the Federal Bureau of Investigation and comes basically from the debriefings of former Auditor General Al Benedict and John Kerr. The information was turned over to Auditor General Bailey in January because he is the only person in an official position to institute and direct appropriate administrative action against these people. Compliance with your request, on the other hand, could result in the general disclosure of these names and their use in the pending political campaign. This would not be an appropriate use of official materials gathered by the Federal Bureau of Investigation and forms the basis of why we must treat your request for disclosure differently than Mr. Bailey's."

Accordingly, I made no disclosure of this information to Ms. Hafer.

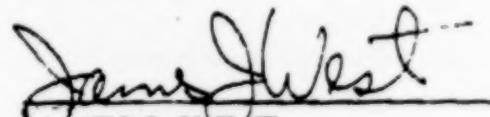
16. On November 15, 1988, following the state election, Ms. Hafer again wrote to me regarding this matter. In her November 15 correspondence, a copy of which is attached as Exhibit I, Ms. Hafer noted that she had been declared the victor in the election for Auditor General of the Commonwealth of Pennsylvania. As Auditor General-elect, Ms. Hafer then renewed her request for "the list of twenty-one (21) persons transmitted to Auditor General Don Bailey in January of 1988".

17. I responded to this request through a letter dated November 23, 1988, a copy of which is attached as Exhibit J. In my correspondence, I declined to immediately provide Ms.

Hafer with the list of these twenty-one (21) individuals, requesting instead that she secure that information directly from the files of the Auditor General's office. I agreed, however, to meet with Ms. Hafer once she was sworn in as Auditor General in order to brief her regarding the results of our own investigation into practices at the Auditor General's office.

18. Barbara Hafer was sworn in as Auditor General for the Commonwealth of Pennsylvania on January 17, 1989. Following her swearing-in, Ms. Hafer and I met on January 18, 1989 to discuss the results of the joint state/federal investigation into corruption at the Auditor General's office. At that time I stood ready to provide Ms. Hafer with the same information which I had previously tendered to Mr. Bailey in the form of a copy of my letter of January 21, 1988. I was informed, however, that Ms. Hafer had already secured this information through a search of the files left by outgoing Auditor General Bailey. Accordingly, I never provided this information directly to Barbara Hafer as she already had this information at the time of our first face to face meeting on January 18, 1989.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.


 JAMES J. WEST
 United States Attorney

**IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES C. MELO, JR. and	:	CIVIL ACTION
	:	
vs.	:	
	:	
BARBARA HAFER	:	
and	:	
JAMES J. WEST, ESQUIRE	:	NO. 89-2935

DECLARATION OF JAMES C. MELO, JR.

I, JAMES C. MELO, JR., being duly sworn according to law, depose and state:

1. I have no personal knowledge of communications between Barbara Hafer, James West and Donald Bailey concerning allegations that certain employs in the Office of the Pennsylvania Auditor General bought their jobs or that payments were made on behalf of said employees for jobs or promotions. I understand that both Ms. Hafer and Mr. West have denied communications between themselves concerning this matter in the course of the fall 1988 election campaign and that Mr. Bailey has made a declaration that there were such communications and that Ms. Hafer's references to the matter as a campaign issue could only have occurred following a "leak" from Mr. West. However, neither I nor the other plaintiffs would have personal knowledge of these matters and therefore are not in a position to take an Affidavit or Declaration, from personal knowledge, to dispute the declarations of Ms. Hafer or Mr. West. We therefore respectfully request that if the Court is of the opinion that Mr. Bailey's Declaration does not raise a genuine issue of material fact with regard to communications between Ms. Hafer and Mr. West that the Court defer any adjudication on Motions for Summary Judgment filed by Ms. Hafer and Mr. West until the conclusion of discovery and until

JA-246

our counsel has had an opportunity to examine under oath the defendants, Mr. Bailey and all persons who have knowledge of the matter.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATE: 8-18-89

JAMES C. MELO, JR.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GROEN, LAVESON, GOLDBERG, RUBENSTONE & FLAGER
BY: WILLIAM GOLDSTEIN
ATTORNEY I.D. #: 12532
FOUR GREENWOOD SQUARE
SUITE 200
BENSALEM, PA. 19020
(215) 638-9330
ATTORNEY FOR: PLAINTIFFS

JAMES C. MELO, JR., et al. : CIVIL ACTION

VS. :

BARBARA HAER :
and :
JAMES J. WEST, FSQUIRE : NO. 89-2935

NOTICE OF APPEAL

Notice is hereby given that plaintiffs James C. Melo, Jr., Louise Jurik, Karol Danowitz, Lucille Russell, Donald Ruggiero, Walter W. Speelman, Jr., John Weikel and James DiCosimo hereby appeal to the United States Court of Appeals for the Third Circuit from the Orders entered in this action on September 28, 1989, to wit: granting the Motion for Summary Judgment of defendant Barbara Haer, granting the Motion of the United States to be substituted for defendant James J. West, Jr. and then granting the Motion to Dismiss of the United States for failure to state a claim on which relief may be granted, denying plaintiffs' Motion to Remand and all other action of the District Court taken that date ancillary to the dismissal with prejudice of Civil Action No. 89-2935.

GROEN, LAVESON, GOLDBERG,
RUBENSTONE & FLAGER

BY: _____


WILLIAM GOLDSTEIN

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GROEN, LAVESON, GOLDBERG, RUBENSTONE & FLAGER

BY: WILLIAM GOLDSTEIN

ATTORNEY I.D. #: 12532

FOUR GREENWOOD SQUARE

ATTORNEY FOR: PLAINTIFFS

SUITE 200

BENSALEM, PA. 19020

(215) 638-9330

CARL GURLEY, et al.

: CIVIL ACTION

VS.

:

BARBARA HAER

: NO. 89-2685

NOTICE OF APPEAL

Notice is hereby given that plaintiffs Carl Gurley, Michael Brennan, Margaret Casper, Elizabeth Buchmiller, Gerard Best, Daniel Clemson, Mary Fager and George A. Franklin, Jr., hereby appeal to the United States Court of Appeals for the Third Circuit from the Order entered in this action on September 28, 1989 granting defendant Barbara Haer's Motion for Summary Judgment and the dismissal of said action with prejudice.

GROEN, LAVESON, GOLDBERG,
RUBENSTONE & FLAGER

BY: 

WILLIAM GOLDSTEIN